Mr. LEAHY. Madam President, I crafted the Ledbetter matter that is now before the Senate.

The PRESIDING OFFICER. That is the pending business.

Mr. LEAHY. Madam President, am I correct that I was seeking recognition when the Republicans suggested the absence of a quorum, and I was still seeking recognition—

The PRESIDING OFFICER. The Senator was standing to seek recognition, although the quorum call was placed without objection.

Mr. LEAHY. Again, I object to somebody asking for a quorum call to be placed, Madam President. Perhaps I don't understand the rules after 34 years here, but I was the first one seeking recognition.

The PRESIDING OFFICER. The Senator from Texas has the floor.

Mrs. HUTCHISON. Madam President, I would like to ask the Senator from Vermont, without relinquishing my right to the floor, if there is something he would like to do that would be short, and then we could go back to the business of the Ledbetter bill. I am happy to try to accommodate him.

Mr. LEAHY. Madam President, as I said when a similar question was propounded by the distinguished Senator from Texas, I wish to speak on the Ledbetter bill.

Mr. REID. Madam President, would the Senator from Texas yield without losing her right to the floor?

Mrs. HUTCHISON. I would be happy to yield.

Mr. REID. There is a lot of time. We are going to be in session as long as people want to talk. The issue before the Senate now is an amendment offered by the Senator from Texas. Senator MIKULSKI, who is managing this bill, has been trying to get a time as to how long the debate will take on this tonight. The distinguished Republican leader asked that we try to figure out what amendments are going to be laid down tonight, and we will try to set up a series of votes, if necessary, in the morning. So no one should feel they are being cut off. There is plenty of time. We are not going anyplace tonight. We are on the Ledbetter legislation. I would hope we could work our way toward a vision of completing this legislation sometime early tomorrow. I appreciate the Senator from Texas moving forward with this.

I know the strong feelings of the Senator from Vermont about this Ledbetter legislation. It is a legal issue, and he is chairman of the Judiciary Committee. But I hope everyone will be calm and relax. There is plenty of time for everyone to say whatever they want tonight.

Mr. LEAHY. Madam President, I ask unanimous consent—and, of course, the Senator from Texas can object and has every right to object—I ask unanimous consent that I be allowed to continue for all of 7 minutes, all on the Ledbetter bill.

Mrs. HUTCHISON. Madam President, reserving the right to object, let me ask the Senator from Ohio, whom I promised 12 minutes, whether he would be able to wait 7 minutes for Senator LEAHY, after which I would turn the floor over to him before I discuss my own amendment?

Mr. VOINOVICH. I am more than happy to do that as long as I have a guarantee that after 7 minutes, I have a chance to offer my voice about the amendment.

Mrs. HUTCHISON. Madam President, let me ask whether I could propose this: I move that the Senator from Vermont be allowed 7 minutes on whatever subject he chooses, after which the Senator from Ohio would have 12 minutes, after which I would have the floor to speak on my amendment.

The PRESIDING OFFICER. Is there objection?

The Chair hears none, and it is so ordered.

The Senator from Vermont.

LILLY LEDBETTER FAIR PAY ACT OF 2009—Resumed

The PRESIDING OFFICER. The clerk will report the pending business.

The assistant legislative clerk read as follows:

A bill (S. 181) to amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967, and to modify the operation of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, to clarify that a discriminatory compensation decision or other practice that is unlawful under such Acts occurs each time compensation is paid pursuant to the discriminatory compensation decision or other practice, and for other purposes.

Pending:

Hutchison amendment No. 25, in the nature of a substitute.

Mr. LEAHY. Madam President, I thank the Senator from Texas, and I especially thank my dear friend from Ohio, whom we are going to miss around here.

Madam President, I held a hearing at which Miss Lilly Ledbetter testified before the Senate Judiciary Committee. It was one of the most moving hearings we have had. The fact that a very activist, very Republican Supreme Court had basically written new law to deny her rights was shocking to everybody before that committee.

I believe we have to pass the bipartisan Lilly Ledbetter Fair Pay Act so employers are not rewarded for deceiving workers about their illegal conduct and maybe signal to the Supreme Court to stop legislating, and stop being an activist Court, but to uphold the law as we write it.

One of the Justice Department's roles in our Federal system of government is to protect the civil rights of all Americans, including those that protect them against discrimination.

The Bush administration's erosion of longstanding interpretation of our antidiscrimination laws has created a new obstacle for victims of pay discrimination to receive justice. That was a mistake when it was advanced by the Bush-Gonzales et al. Justice Department. It was a mistake when five Justices on the Supreme Court adopted the Justice Department's erroneous interpretation of congressional intent. It culminated in an erroneous opinion written by Justice Alito.

I understand the Members on the other side of the aisle introduced partisan amendments to the legislation. They have that right. But it is my belief that the amendments should be opposed for one simple reason: they are going to allow illegal pay discrimination to continue.

We are going to hear that this might encourage workers who are being paid less as a result of discrimination to delay filing for equal pay. That argument defies logic. Anyone who heard Ms. Ledbetter's testimony before either the Senate Judiciary Committee or the Senate Health, Education, Labor, and Pensions Committee knows that she, like other victims of pay discrimination, had no incentive to delay filing suit. But employers, based on the erroneous interpretation by the Supreme Court, the activist interpretation by the Supreme Court, now have a great incentive to delay revealing their discriminatory conduct: blanket immunity.

The reality is, many employers do not allow their employees to learn how their compensation compares to their coworkers'. They can hide it and hide it and hide it until these women finally retire, pray that they never find out how they were discriminated against, and then say when they are found out: Oh, my goodness gracious, you should have filed suit earlier. The fact that we had it all locked up and you couldn't possibly have known you were being discriminated against is your fault. These victims have the burden of proving the discrimination occurred and that evidentiary task is only made more difficult as time goes on.

It seems it is always the woman employee's fault. That is wrong. Workers like Ms. Ledbetter and her family are the ones hurt by the ongoing diminished paychecks, not their employers.

The bipartisan Ledbetter Fair Pay Act of 2009 does not disturb the protections built into existing law for employers, such as limiting backpay in most cases to 2 years. It does not eliminate the existing statute of limitations. Instead, it reinstates the interpretation of when the 180-day time limit begins to run, an interpretation that was run over roughshod by the Bush administration at its urging by their appointees on the Supreme Court. The bill corrects this injustice to allow workers who are continuing to be short-changed to challenge that ongoing discrimination when the employer conceals its initial discriminatory pay decision.

Opponents of the bipartisan Ledbetter Fair Pay Act may raise other excuses. They will no doubt

claim that somehow trial lawyers will benefit, but the reality is the Supreme Court in the Ledbetter decision could actually lead to more litigation because people will feel they have to file premature claims so that time does not run out.

The Congressional Budget Office has concluded that this legislation ''would not establish a new cause of action for claims of pay discrimination'' and ''would not significantly affect the number of filings with the Equal Employment Opportunity Commission'' or with the Federal courts.

Congress passed title VII of the Civil Rights Act to protect employees against discrimination with respect to compensation because of an individual's race, color, religion, sex or national origin but the Supreme Court's Ledbetter decision goes against both the spirit and clear intent of our antidiscrimination laws.

It also sends the message to employers that wage discrimination cannot be punished as long as it is kept under wraps.

At a time when one-third of private sector employers have rules prohibiting employees from discussing their pay with each other, the Court's decision ignores a reality of the workplace—pay discrimination is often intentionally concealed.

The Lilly Ledbetter Fair Pay Act is the only bill that gives workers the time to consider how they have been treated and the time to work out solutions with their employers. Our bipartisan bill fulfills Congress's goal of creating incentives for employers voluntarily to correct any disparities in pay that they find. Most importantly, our bipartisan bill ensures that employers do not benefit from continued discrimination.

I will not support amendments that weaken this bipartisan bill. I support the ability of all employees to receive equal pay for equal work.

The Lilly Ledbetter Fair Pay Act is the only bill that gives workers the time to consider how they have been treated and the time to work out a solution with their employers. Our bipartisan bill fulfills Congress' goal of creating incentives for employers voluntarily to correct any disparities in pay they find. I am not going to support amendments that weaken this bipartisan bill. I support the ability of all employees to receive equal pay for equal work. It comports completely with what we learned in the Judiciary Committee.

I applaud the Senator from Maryland. I applaud her cosponsors. I am proud to be one of them.

Ms. MIKULSKI. Before the Senator from Ohio speaks as agreed upon, I thank the chairman of the Judiciary Committee for his compelling remarks and steadfast support for women generally and certainly for his longstanding advocacy that women should be paid equal pay for equal or comparable work. Thank you very much.

The PRESIDING OFFICER (Mr. NELSON of Florida). The Senator from Ohio is recognized.

Mr. VOINOVICH. Mr. President, I rise today in strong support of the Hutchison substitute amendment.

Before I discuss the merits of the Hutchison amendment, I wish to thank Senator MIKULSKI for her commitment to debate this legislation in a constructive manner. As Senator MIKULSKI said, we can disagree, without being disagreeable.

I thank the Democratic leader, the Senator from Nevada and the minority leader, the Senator from Kentucky, for agreeing that we will make our best efforts to return to the tradition here in the Senate of debating bills and allowing amendments to be offered, and returning things to the point where I think it will enhance the reputation of this great body in terms of the body that is looking in on us. I hope this is the beginning of a new era here. I think the more we can work together, the better they are going to feel about the future of our country.

I would also like to thank my colleague, Senator HUTCHISON, who I know is extremely busy in her role as ranking member of the Commerce Committee. Her efforts to draft a solution are commendable. Senator HUTCHISON is in a strong position to speak on issues arising from both her substitute amendment and Senator MIKULSKI's underlying legislation. As Senator HUTCHISON said in her opening remarks, as a young lawyer coming out of law school, she experienced the nefarious consequences of gender discrimination. In addition, I think her experience as a small business owner and the general counsel of a bank provides Senator HUTCHISON with the unique perspective to understand the problems with Senator MIKULSKI's legislation.

There is one thing on which we all agree: Gender and other forms of discrimination are wrong, illegal, and they should not be tolerated. This debate should not be about whether one party condones illegal discrimination; rather, this debate must focus on how to strike the right balance to address the situation in which a person is subject to an individual act of discrimination but through no fault of their own has no way to know about it.

As I mentioned during my retirement announcement last week, one of the reasons I decided to retire in 2 years was the desire to spend more time with my family. I am the proud father of a daughter, Betsy, who graduated as a member of Phi Beta Kappa. When she was growing up, I said: Honey, the sky is the limit for whatever you want to do.

In addition to my daughter Betsy, I have seven grandchildren, and six of them are girls. I have said the same thing to them: The sky is the limit. My oldest granddaughter, Mary Faith, is 12 years old. One of these days, she is going to be out in that business world. I want Betsy, Mary Faith, and all my grandchildren, to have the opportunity to reach their full potential based on their God-given talents, and not be constrained by outdated prejudices.

Based on the debate so far, I believe there is a good deal of agreement between Members who support Senator HUTCHISON and Members who support Senator MIKULSKI's legislation. For example, we agree that discrimination based on gender is illegal and wrong. We also agree that the dynamics of the modern workplace may make instances of such discrimination difficult to detect if the discrimination is reflected in pay decisions.

Unlike when someone is denied a job, a promotion, or is terminated, paycheck discrimination may not be obvious. The source of our disagreement is how to find a solution to address this specific issue.

Before I address the specifics of why I support Senator HUTCHISON's amendment over Senator MIKULSKI's legislation, I believe there are some misconceptions about the Supreme Court's Ledbetter v. Goodyear decision. Advocates of the Ledbetter legislation have continued to state that passing the Lilly Ledbetter Fair Pay Act will restore the law to what it was before the Supreme Court's decision. This is misleading. In its Ledbetter decision, the Supreme Court clarified a faulty interpretation of its early decision in Bazemore v. Friday. The Supreme Court did not change the underlying statute of limitations in title VII.

I think it is helpful to understand what the Court did in distinguishing these two cases. The Court's Bazemore decision held that if an employer's pay structure is facially discriminatory, that is, the pay structure sets different compensation on criteria like race or gender, then the paycheck is the last act of illegal conduct from which the 180-day filing period begins. The Court, rightfully in my opinion, distinguished this from the situation in Ms. Ledbetter's lawsuit.

With Ms. Ledbetter's lawsuit there was not a discriminatory pay structure in place, but rather allegations of specific acts of discrimination. The Court found those discrete acts occurred outside the 180-day filing period. I think that is an important distinction Members should understand.

Still, as some of my colleagues pointed out during this debate, specific and discrete acts of wage-based discrimination may be very difficult to detect within the 180-day filing period provided under title VII. This could lead to situations in which an employer escapes liability simply because the person did not know that a discriminatory act took place.

In such a situation, the 180-day filing rule appears to reward bad behavior and harm the person facing the illegal discrimination. I agree with Senator MIKULSKI that under this situation a strict 180-day filing rule is unfair.

As one of my colleagues supporting the Ledbetter legislation pointed out,

the Supreme Court, in TRW v. Adelaide and in an opinion authored by Justice Ginsburg, interpreted a statute of limitations arising under the Fair Credit Reporting Act as starting ''from the date on which the liability arises.'' Understanding this could unduly penalize victims of identity theft, Congress enacted a fix as part of the Fair and Accurate Credit Transaction Act of 2003. This fix extended the relevant statute of limitations based on the ''discovery by the plaintiff'' of the impermissible conduct.

Unfortunately, this is not the approach the Ledbetter legislation takes. Rather, it would adopt a rule allowing for the filing of lawsuits 180 days after the last paycheck issued by the employer that was affected by a discriminatory act, even if it was a single act that occurred many years ago. Thus, the Ledbetter legislation could allow for the filing of lawsuits long after someone knew they were subject to a discriminatory act, effectively eliminating the statue of limitations from title VII in many cases.

As the Supreme Court noted in its Ledbetter decision, statutes of limitations serve an important policy of repose in our justice system. Under American legal principles, it has long been public policy that a person should not be called into court to defend claims that are based on conduct long past.

As many of my colleagues who have practiced law know, it can be very difficult to mount a defense in cases in which the underlying conduct occurred long ago because witnesses are difficult to locate, memories fade, and records are not maintained. In Ms. Ledbetter's case, the supervisor accused of the misconduct died by the time of the trial. Yet under the approach taken by the Ledbetter legislation, defendants could potentially find themselves facing lawsuits that are years, if not decades, old.

Because she recognizes that paycheck discrimination may not be obvious in the modern workplace and that a bad actor should not benefit from hiding such discrimination, Senator HUTCHISON crafted a sensible compromise. Under the Hutchison amendment, a person could bring a claim under title VII within 180 days after obtaining knowledge or information that the person is the victim of discriminatory conduct. In other words, you don't start the 180-day statute of limitations until the person knows or has reasonable suspicion that she is subject to a discriminatory wage. But once you know you have been discriminated against, then it is your obligation to bring that to the attention of the EEOC and start the process to obtain relief.

By allowing a person to bring a claim from 180 days after the discriminatory conduct is discovered, Senator HUTCHISON's amendment stops bad actors from benefiting, and addresses many of the concerns many of my colleagues raised.

Unfortunately, the Ledbetter legislation would swing the pendulum completely in the opposite direction and create an open-ended legal liability that could expose businesses, the very entities we need to help us lift our economy out of this recession, to expensive new legal liabilities.

While this may not be good for insurance companies who write policies and trial lawyers who bring lawsuits, I do not believe the legislation is sound public policy.

Finally, I want to address a related issue before I yield the floor. Besides disagreeing on the solution to the issues created by the Ledbetter decision, Senator MIKULSKI's legislation did not go through the HELP Committee during this Congress.

While I understand the HELP Committee held one hearing on the Ledbetter bill during the 110th, this hearing occurred before Senator HUTCHISON introduced her legislation, which is now before us as the pending amendment. As a result, the Senate is left without the wisdom of having testimony and information comparing the different approaches.

While I understand sometimes it is necessary to bypass committees, the Senate has started to bypass the committee process too frequently. So often, as a result of that committee process, compromises can be worked out so once the bill is out of committee in many instances you can get a UC and get that legislation passed, or at least people have had a chance to talk about it in terms of some compromise.

So I am glad to be involved in this debate, but I believe the Senate and our Nation would be better served if the Senate got back into the habit of taking up legislation after it has gone through the relevant committee. In fact, I believe if these two legislative proposals had been discussed in the HELP Committee, the committee might have crafted a compromise bill that had the support of most, if not all, of my colleagues.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Texas is recognized.

Mrs. HUTCHISON. Mr. President, I appreciate very much the remarks of the Senator from Ohio who has much the same feeling about this I do. He wants to protect the employee who has known discrimination but also knowing that a business or small business needs to know what the liability might be and, hopefully, correct it if the notification is given in a timely way.

So I would look forward to talking about my amendment. At this time, I ask unanimous consent that my amendment be set aside in order for Senator SPECTER to be able to offer amendments, after which then Senator MIKULSKI will have the floor. Then when we get back to my amendment, I would like to debate my amendment.

Ms. MIKULSKI. Mr. President, I thank the Senator. We wish to follow the recommendations of our mutual leadership, which was to debate the Hutchison substitute tonight but to get as many amendments laid down tonight as we can. The Senator from Pennsylvania has two amendments he wants to offer. So I agree with the plan of laying aside the Hutchison substitute, having the Senator from Pennsylvania, Mr. SPECTER, offer his amendment, and at such time we will return to our robust debate on the Hutchison substitute and, hopefully, we can get a regular order going back and forth.

Mrs. HUTCHISON. Mr. President, I think that is a good plan. I appreciate the accommodation of the Senator from Maryland.

The PRESIDING OFFICER. The Senator from Pennsylvania.

AMENDMENT NO. 26

(Purpose: To provide a rule of construction)

Mr. SPECTER. Mr. President, I call up amendment No. 26.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER] proposes an amendment numbered 26.

The amendment is as follows:

(Purpose: To provide a rule of construction)

Strike the heading for section 6 and insert the following:

SEC. 6. CONSTRUCTION.

Nothing in this Act or any amendment made by this Act shall be construed to prohibit a party from asserting a defense based on waiver of a right, or on an estoppel or laches doctrine.

SEC. 7. EFFECTIVE DATE.

Mr. SPECTER. Mr. President, I agree with the underlying approach that women ought to receive equal pay for comparable work. I voted for cloture on the Ledbetter bill in the last Congress. I had been a cosponsor of the bill. I had not cosponsored the legislation this year because of my interest in making two changes I think would improve the legislation and would reduce the opposition.

I begin by congratulating Senator MIKULSKI and Senator ENZI for the very important work they have done. I congratulate Senator HUTCHISON on the amendment she has offered, the substitute. I intend to support her amendment.

The time when the statute of limitations begins to run is when the employee knew or should have known. I think that is fair. I think it is reasonable to say to an individual where you are being discriminated against, and you know about it, or you should, in reasonable diligence, know about this. This is a standard used in the law in many areas: actual knowledge or constructive knowledge, where somebody should have known. That is fair to say, at that point a person is on notice, they ought to begin their lawsuit. It is fair for the statute of limitations to begin running at that time to give the defendant a fair opportunity to know about it.

The amendment I have offered is hand in glove with the concept of

''should have known,'' that is, or actual knowledge, actual or constructive, to provide that the defendant will have the defense based on waiver or estoppel or laches. Waiver means you take an affirmative act and say: I do not want to assert my rights. That is a waiver. Estoppel means you are estopped from bringing the defense because of some conduct on your part which precludes you from bringing the action, or estopped. You are estopped from bringing the claim. And laches means too much time has passed, that you are barred by time. These are equitable doctrines which have more flexibility as opposed to a specific date. The essence of these defenses of waiver, laches, and estoppel was articulated in the dissenting opinion of Justice Ginsburg. She disagreed in the 5 to 4 decision which precluded women from claiming equal pay. She said that women ought to be able to claim equal pay and employers have a fair right to defend if they can assert these defenses.

So this is what Justice Ginsburg said: Allowing employees to challenge discrimination ''that extends over long periods of time,'' into the charge-filing period, does not leave employers defenseless against unreasonable or prejudicial delay. Employers disadvantaged by such delay may raise various defenses. Doctrines such as ''waiver, estoppel, and equitable tolling'' ''allow us to honor Title VII's remedial purpose without negating the particular purpose of the filing requirement, to give prompt notice to the employer.''

So what Justice Ginsburg lays out are the defenses which the employers would have in any event, but in putting it into the statute, it makes it conclusive. I think it is good so that you do not have an argument as to whether employers have these defenses. It allows the plaintiff to bring the claim, and allows a reasonable defense by the employer.

Mr. President, I now ask unanimous consent that the Hutchison amendment and my amendment be set aside so that I may lay down a second and final amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 27

Mr. SPECTER. Mr. President, I now call up amendment No. 27.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER] proposes an amendment numbered 27.

Mr. SPECTER. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To limit the application of the bill to discriminatory compensation decisions)

At the appropriate place, insert the following:

SEC. ___. LIMITING APPLICATION TO DISCRIMINATORY COMPENSATION DECISIONS.

(a) FINDINGS.—In section 2(1) of the Lilly Ledbetter Fair Pay Act of 2009, strike ''or other practices''.

(b) CIVIL RIGHTS ACT OF 1964.—In section 706(e) of the Civil Rights Act of 1964 (as amended by section 3), strike subparagraph (A) of paragraph (3) and insert the following:

''(A) For purposes of this section, an unlawful employment practice occurs, with respect to discrimination in compensation in violation of this title, when a discriminatory compensation decision is adopted, when an individual becomes subject to a discriminatory compensation decision, or when an individual is affected by application of a discriminatory compensation decision, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision.''.

(c) AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967.—In section 7(d) of the Age Discrimination in Employment Act of 1967 (as amended by section 4), strike paragraph (3) and insert the following:

''(3) For purposes of this section, an unlawful practice occurs, with respect to discrimination in compensation in violation of this Act, when a discriminatory compensation decision is adopted, when a person becomes subject to a discriminatory compensation decision, or when a person is affected by application of a discriminatory compensation decision, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision.''.

Mr. SPECTER. Mr. President, the essence of this amendment is to strike the term ''or other practices.'' The core issue here is pay, and that is what I think we ought to deal with.

There are objections to this bill on the grounds that it is a lawyers bonanza and will allow a lot of litigation. Well, I do not think that is a sound argument, but I think there is merit in specifying that this legislation is aimed at pay, and if you talk about other practices it is going to produce a lot of litigation because there is no definition of what the ''other practices'' means.

For example, other practices might be promotion, might be hiring, might be firing, might be training, might be territorial assignment, might be transfer, might be tenure, might be demotion, place of business reassignment, might be discipline. All of these are possibilities when you talk about ''other practices.'' I do not purport to be making an exhaustive list. Those are only some of them, the possibilities on what might be included in other practices. When talking about pay, you know what you are talking about. Now, if it is the objective of the drafters of the bill to cover promotion or to cover hiring or to cover firing, fine; let's say so. If there is an intent to cover any of these other specific items, let's consider that. Let's make an evaluation as to whether that is a practice which requires remedial legislation. But in order to have ''other practices,'' I think we have the potential of reaching a quagmire and have a lot of litigation about what the intent was of Congress, a lot of questions as to what we intend to do.

Now, of course, in listing all of these items, if this amendment is defeated, I know lawyers will be citing this argument to say, well, if the amendment offered by ARLEN SPECTER was defeated, it must mean that all of those other practices are included, and then some, which is not my intent. But I do believe it would be a crisper bill, and we would know exactly what we are talking about.

Again, I say if anybody wants to include other practices, so be it.

Mr. President, I was advised that the senior Senator from Illinois was going to be here at 5:15. I want the RECORD to show that I finished my comments 1 minute early so as to allow the manager to maintain her commitment.

The PRESIDING OFFICER. The assistant majority leader.

Mr. DURBIN. Let me thank the Senator from the Commonwealth of Pennsylvania for his gracious acknowledgment of my opportunity to speak on this legislation. I look forward to working with him. I hope we can get this passed.

Let me tell you what the issue is. Fundamentally, it is just basic. In the case of Lilly Ledbetter, here is what it is coming down to: Should women be paid the same for work as men? That is it. That is the basic question.

Lilly Ledbetter was a lady who worked at the Goodyear Tire plant in Gadsden, AL. You do not expect to find a lot of women working in a plant like that, do you? She went on to the managerial part of the plant, which meant she was on her way up in the managerial ranks. She worked there for years, 19 years, and at the end of the 19 years when she was near retirement, somebody said: Lilly, did you realize all of these years you were working there that men who had the same job you did were being paid more than you?

She said: That is not right. That can't be true.

She checked it out, and it was true. All those years she had the same job classification, the same job responsibilities, and she was paid less.

She said: It is not fair. I think I ought to receive compensation because the company basically discriminated against me just because I am a woman. She takes her case and files it. In most cases, it is a pretty simple situation. What was the job; what did it pay. Did you pay women less than you paid men? These are basic fact questions. Then it made it all the way across the street to the U.S. Supreme Court. Then nine Justices sat down to take a look at the Ledbetter case. The Chief Justice of the Supreme Court, John Roberts, and Sam Alito, a recent appointee by the Bush administration to the Supreme Court said: We are sorry, Ms. Ledbetter. You cannot recover for this discrimination.

She said: Why?

They said: Well, you should have discovered this and reported it the first time you got a discriminatory paycheck. The first time you were paid

less than a man who had the same job, you had 180 days from that point. When that different paycheck was given, you had to file your claim.

Of course, common sense and life experience would tell you that most people at work don't know what their fellow employee is being paid. Lilly Ledbetter didn't know. She didn't know for 19 years that the men working right next to her were being paid more than she. But the Supreme Court said: Sorry, Lilly Ledbetter. Darn shame, but you should have filed this claim years ago. The fact that you are still being paid a discriminatory wage doesn't work because you had 180 days from the first time they sent a different paycheck to a man than a woman to file your claim, and you didn't do it. You are out of court. Thanks for dropping by. End of case.

I look back at these Supreme Court Justices' answers when they appeared before the Senate Judiciary Committee. I particularly remember Chief Justice Roberts because he was the most impressive witness I had ever seen. He sat there for days and answered every question without a note in front of him. He is a brilliant man. He made a point of saying: I feel like a Supreme Court Justice is an umpire. I'll call balls and strikes there. I am not supposed to make up new rules for the ball game. I'll watch the pitches coming in, and I'll call balls and strikes.

This is a foul ball. This decision by that Supreme Court ignores the reality of the workplace today. I asked Senator MIKULSKI, who is leading our effort, what is the basic discrimination between men and women in pay today? She said it is about 78 cents for the woman and a dollar for the man. As a father of daughters and sons, I think my daughters should be treated as fairly as my son. If they do the same work, they ought to get the same pay. What Senator MIKULSKI says in her basic bill, the Lilly Ledbetter Fair Pay Act, is we are not going to allow the Supreme Court decision to stand. It makes no sense. If the company is continuing to discriminate against you in its paycheck, that is good enough. You ought to be able to go to court, not the fact that the discrimination started 10 years ago, 12 years ago, and you didn't know about it.

Basically, in the law, we have this matter called the statute of limitations. It says you get a day in court but only for a window of time for most things. If you don't go to court in that window, you don't get to go. You are finished. But we make an exception in most cases for what is known as fraud and concealment. If the person guilty of the wrongdoing has concealed what they are doing and you don't know it, you can't say the time is running. It doesn't run in that circumstance because there is concealment. In this case, there is clearly a situation where you don't know what your fellow employee is being paid.

Senator HUTCHISON of Texas comes with an amendment. I am sure it is a well-intentioned amendment, and I am sure she is not going to defend pay discrimination. I am sure she doesn't stand for that; none of us do. But she adds a provision, and I wish to make sure I have the language right because it is important we take it into consideration. She says her amendment would only permit a victim to bring a discrimination claim if she ''did not have, and should not have been expected to have, enough information to support a reasonable suspicion of such discrimination.'' On its face it sounds: What is wrong with that? What is wrong with that is now Lilly Ledbetter and people such as she have a new burden of proof. They have to prove to the court they had no reason to suspect their employer was discriminating against them. It becomes subjective. It becomes difficult. It adds another hurdle. Why would we assert this hurdle? If anything happened yesterday in Washington, DC, it was an announcement of change in this town and in this Nation. With the election of Barack Obama as President, many of us believe we are going to start standing up for folks who haven't had a fighting chance for a long time. People who are being discriminated against in the workplace, folks such as Lilly Ledbetter, who spent a lifetime getting less pay than the man right next to her, are going to have their day in court, a chance to be treated fairly. That is what this bill says. That is why Senator MIKULSKI's leadership is so important.

We are saying to the Supreme Court, wake up to reality. You don't know what the person next to you is being paid. They don't publish it on a bulletin board. Maybe they do for public employees such as us, and that is right. But in the private sector, that doesn't happen. That is what this is all about. That is what the battle is all about.

Senator HUTCHISON comes here and says: Here is another thing Lilly Ledbetter should have had to prove; in her words, Lilly Ledbetter would have been required to prove that she should not have been expected to have enough information to support a reasonable suspicion.

I think it goes too far. We ought to look at the obvious. If a person is a victim of discrimination, once they have discovered those facts and assert those in court, they should have compensation. Employers ought to be given notice nationwide that we want people to be treated fairly, Black, White, and Brown, men and women, young and old, when it comes to job responsibilities. If you do the work, you get the pay. If you get discriminated against because your employer is secretly giving somebody more for the same job, you will have your day in court.

I think it is pretty American, the way I understand it. It gets down to the basics of what this country is all about.

I salute Senator MIKULSKI for her leadership and urge my colleagues to oppose the Hutchison amendment and to pass the underlying bill.

Now I will quote a newspaper from Chicago which occasionally endorses me but not very often, the Chicago Tribune, no hotbed of liberalism. When they read the Ledbetter decision from the Supreme Court, they said:

> The majority's sterile reading of statute ignores the realities on the ground. A woman who is fired on the basis of sex knows she has been fired. But a woman who suffers pay discrimination may not discover it until years later, because employers often keep pay scales confidential. The consequences of the ruling will be to let a lot of discrimination go unpunished.

Those who vote against the Ledbetter bill or vote for the Hutchison amendment will allow a lot of discrimination in America to go unpunished. President-elect Obama has said that passing this bill as one of the earliest items in his new administration is part of an effort to update the social contract in this country to reflect the realities working women face each day.

I urge my colleagues to help update the social contract with this new administration and this new day in Washington. Let us, after we have cleaned up the mall and all the folks have gone home, not forget why we had that election, made that decision as a nation, and why America is watching us to see if our actions will be consistent with our promises.

I yield the floor.

Mrs. HUTCHISON. Mr. President, is the pending legislation my substitute for the Mikulski bill?

The PRESIDING OFFICER. The pending amendments are the two Specter amendments.

AMENDMENT NO. 25

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the Hutchison substitute be laid on the table and be the pending business.

The PRESIDING OFFICER. Is there objection?

Ms. MIKULSKI. Reserving the right to object.

Mrs. HUTCHISON. Mr. President, it was my understanding that when Senator SPECTER laid aside my amendment, we would return to my amendment, my substitute, after his two amendments had been offered. That was what we intended and that is what I was trying to restore.

Ms. MIKULSKI. I believe that clarifies it. I concur. I withdraw my reservation of objection.

The PRESIDING OFFICER. Without objection, it is so ordered. The amendment of the Senator from Texas will be the pending business.

Mrs. HUTCHISON. I yield 10 minutes to the Senator from Alaska.

The PRESIDING OFFICER. The Senator from Alaska.

Ms. MURKOWSKI. Mr. President, I rise to speak in support of the Hutchison substitute amendment to

the Lilly Ledbetter Fair Pay Act. I do believe this substitute amendment strikes a fair balance in ensuring that employees can be relieved of discrimination. I wish to say, at the outset of my comments, I am very pleased we are able to offer amendments to this legislation. I do intend to work with my colleagues to craft and support any other amendments that I believe will improve the legislation before us.

Before speaking directly to the Hutchison substitute, I wish to make very clear one point: Discrimination because of an individual's gender, ethnicity, religion, age or disability cannot be tolerated. No American should be subject to discrimination. If they are, they have the right to the law's full protection.

The heart of the Supreme Court's Ledbetter decision is the ruling that the law requires an employee to file a complaint within 180 days of when the discriminatory intent is first activated by paycheck. Last year, I had the opportunity to speak with Lilly Ledbetter. I know she made a visit to many offices. I had a good conversation. I believed her when she told me she didn't know her wages were lower than those of her male colleagues. I agreed it is often very difficult, perhaps impossible, to know how one's wages compare with another employee's, and that even if an employee does know that he or she is being paid less, that often it is very difficult to know for sure that the reason for the disparity is discrimination.

The best solution to this problem, though, is not necessarily to restart the clock at each paycheck. I believe the best solution is to clarify that if the employee did not know about the discriminatory action at the time it was supplied or could not have reasonably suspected discrimination, the clock starts when that knowledge is available to the employee or when it is reasonable for the employee to have known of the discrimination.

It is also reasonable to require that an employee file a complaint in a timely manner, once that knowledge or that suspicion is available. The Hutchison substitute is a good fix to the Ledbetter decision. Her amendment not only recognizes that many employees do not know what their colleagues are being paid or that any disparity is due to discrimination, the Hutchison substitute amendment would also restore the reasonable requirement that the employee file a complaint in a timely manner.

We all know memories have a tendency to fade away. Paperwork may be lost or thrown away. People leave jobs. Requiring an employee to file a timely claim benefit benefits the employee in pressing his or her claim. How can the Equal Employment Opportunity Commission investigate a claim of discrimination and find the truth, if the discriminating supervisor has retired, moved away or, perhaps, even died? That is what happened to Lilly Ledbetter. The supervisor who made the original discriminatory decision about her wages died before she could even file her complaint. He wasn't even available to be questioned or cross-examined. How can the EEOC find out the truth, if the records were lost that show a woman or a minority or senior or disabled person's first paycheck was inordinately lower than the first paycheck of his or her peers?

So Senator HUTCHISON's amendment ensures that this clock does not start running on the 180-day statute of limitations until an employee finds out about, or could reasonably be expected to suspect, the possibility of discrimination. It ensures that workers can hold their employers accountable for pay discrimination.

Now, some have argued—or some will argue—Senator HUTCHISON's amendment would institute an unfair discovery rule. They argue it will force employees to file before they are sure of discrimination, when they may most fear retaliation. But I disagree. Senator HUTCHISON's amendment says the clock starts when the employee ''did not have, and should not have been expected to have, enough information to support a reasonable suspicion of such discrimination, on the date on which the alleged unlawful employment practice occurred.'' It does not say the employee must file when they have a hunch. It says a ''reasonable suspicion.''

Opponents of this amendment may also contend that the Lilly Ledbetter Fair Pay Act simply restores the paycheck accrual rule that was in place before the Supreme Court decision and that a discovery rule would be a new hurdle for employees to deal with. Again, I disagree with this. Prior to the Supreme Court's Ledbetter decision, the EEOC applied, through regulation, the concept—many attorneys are familiar with it—of ''equitable tolling.'' This concept basically means that a plaintiff may proceed with a complaint notwithstanding missing a deadline if the employee did not know he or she was being discriminated against.

The Hutchison amendment actually strengthens that familiar, often used legal concept that protects employees' rights by putting it in the statute.

Opponents of placing a so-called discovery rule in the law also allege it would lead to confusion in the courts. They call it an unclear and untested rule. Again, I would disagree. The EEOC and the courts are quite familiar with the concept of equitable tolling, and there is substantial case law in which it has been applied.

Opponents also claim a discovery rule will force plaintiffs to prove a negative—that the employee should not be expected to have known about the discrimination—before they even get to the question of whether there was discrimination. I believe it is fairly easy to prove that one did not have access to the pay records of other employees, that it is fairly easy to prove the piece of information that led the employee to file the complaint was not available to him or her earlier.

I believe the substitute amendment we have before us strikes the right balance in ensuring that employees can be relieved of discrimination. It recognizes employees often do not know their pay is different from their colleagues. It recognizes it is not always obvious that a pay disparity is based on discrimination.

For those reasons, I have cosponsored this amendment by my colleague, Senator HUTCHISON, and I urge my other Senate colleagues to support it.

With that, Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I thank the Senator from Alaska for her support of my amendment.

I wish to lay out my amendment one more time, and then the long-suffering and ever-patient Senator from Maryland will have the chance to rebut. She has been so wonderful about making sure everyone got a chance to speak and knowing we would still be here to debate this amendment, and then setting a time agreement for the vote tomorrow, when the leaders have made that decision.

This is such an important issue. As the Senator from Alaska has said, and really everyone has said, we all want to make sure we give every opportunity to a person who has faced discrimination in the workplace to be able to have a redress of that discrimination.

The law, as it is today, gives 6 months for a person to be able to go forward to the EEOC, and then later to the courts, to say there has been an act of discrimination. Now, most of the time it is easy for an employee to know when a cause of action occurs. If it is age discrimination and someone has been demoted; if it is a firing, of course; any lessening of duties or responsibilities, that is a signal that perhaps there is some discrimination of some kind—whether it be based on age or gender or whatever might be alleged.

The harder issue is pay, there is no question because most people do not talk about what they make around the water cooler or in the break room. Most people hold that close because there are many factors that go into pay. Because of that, it is harder to do the fair thing. That is what I am trying to do with my amendment, to make sure there is a fair opportunity for an employee to have the right of redress and also a fair opportunity for the person in business to know if there is a liability or a mistake.

If the Mikulski bill passes, one would be able to sit on a claim because it would not matter if the person should have known of the alleged discrimination. They can pick their time, and it could be months, years, decades after a discrimination has occurred. This is a

problem because the employer has to be able to have an opportunity to mount a legitimate defense with records that would be kept, with witnesses who would come forward, with memories that would be fresh, to give the employer the right to know what the liability is and be able to have witnesses or the person who is accused there to make the other side of the case.

In pay discrimination, what we are doing in my substitute is basically setting a standard that will be uniform across the country, in all courts. It is what the Supreme Court has said should be the test. In some districts, the court will say: Well, let's hear from the employee why she did not know or why he did not know. If the court says: Well, I think that is reasonable—maybe there is a policy in the company that if you talk about your salary, that is grounds for firing. Now, that would be a very strong presumption for the employee that maybe they were in the dark. So we want that employee to have the right to say there is no way I could have known. There was a policy against it. But we need to have that standard across the board in every district. Some courts will do it, but not every court will do it, which is why my substitute amendment is needed, because we need every employee to have the ability to make the case that person could not have known.

Now, the distinguished assistant majority leader said that puts the employee with the burden of proof. Well, the employee is the plaintiff. The plaintiff always has the burden of proof in our legal system. We would certainly—if it were something that would make a difference to the Senator from Maryland or the Senator from Illinois; if it would make a difference that we would establish a rebuttable presumption that would favor the employee but be allowed to be rebutted by the employer—we could talk about that, and I would be open to that suggestion.

But the plaintiff bringing the case in our system does have the burden of proof. What we want is to assure that responsibility is codified in the law, that it is codified so that person has the right, but also the responsibility to press a claim. This is the important part of the substitute that says we want the right of the employee to be able to say they did not know, and why, and give courts the chance to apply a standard that would be set for everyone in this country to have the right to press the claim if they did not know.

On the other hand, the reason we have statutes of limitations—and we have had since the beginning of law in this country, and in other civil law countries—is that the defendant does have a right to be able to make the defense and be able to anticipate what the liability might be. A small business that has a person come forward who has a claim from 10 years ago, and they did not know the employer did not know this right was accumulating and could result in a catastrophic effect on a small business—when if the employee, when he or she suspected, brought forward this claim, perhaps it could be settled right then and there so everyone wins.

So I hope we can work on this bill so we do give fairness to both sides in a legal case. We wish to have the right of the employee to come forward when that person knew or should have known within 6 months of that right accruing; and we need to have the right for the business to be able to have evidence, records, witnesses, and fresh memories to mount an effective case in defense if they are going to rebut the charge. That is one part of the substitute.

The other part is, I think, also very important; and that is that in the bill before us there is a major change in common law and in tort law that has also been a part of our legal system and our case law since the beginning of law in our country and in other countries that have the types of laws we do; and that is that a tort accrues a right to the person who is offended or damaged or hurt by another action. It does not accrue to another person who is affected by or might be considered affected by this claim.

Now, there are exceptions to that. But in the main, it is, I think, essential, if we are going to have a statute of limitations that goes beyond the act itself—and in this case it would be 6 months, which is the law today—that it accrue to the person actually injured, the employee, and not some other person on behalf of the person who did not bring the case.

Under the Mikulski bill, the Ledbetter Act, a new right has been given to a person who may not be the person with the injury. So it could be a case where the person dies after working at a place of employment, a business. The person dies, and within 6 months of that person's last paycheck and subsequent death, some other person—an heir, a child, a mother, a father—could bring a case, which the person who has allegedly been discriminated against chose not to bring or did not bring. In such an absurd case, possible under the Ledbetter bill, you do not even have the person discriminated against to testify. I think this is a very big hole in the concept of fair play that our legal system tries to provide. By saying ''other affected parties,'' I think we have opened up a whole new right and possible class of plaintiffs that has not been contemplated before and could achieve an inequitable result.

So I hope very much that people will look at my substitute and try to get to the same end Senator MIKULSKI and I both want, by trying to shape the legislation so that it keeps the fairness in the process for a person who claims a discrimination and a person in the business that has hired this person to have a fair right for a defense. That should be our goal. I think my substitute does achieve that balance. I hope very much we can work this into a bill that all of us can support for people who have certainly known discrimination, as I have, and for people who want to make sure their children and grandchildren don't face discrimination, as well as for those who wish to make sure we don't discriminate against that small business owner who is all of a sudden, after 10 or 15 years, maybe looking at a liability that they didn't know about, couldn't prepare for because they don't know about it; maybe it is a mistake and maybe it could be corrected if we keep that statute of limitations that would say a person knew or should have known can have 6 months to file a claim so there can be an equitable, judicial remedy for this potential claim.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Ms. MIKULSKI. Mr. President, I yield the floor to the Senator from Maryland for such time as he may consume. He has been a longstanding advocate for women. He is a current member of the Judiciary Committee. He was the Speaker of the House in Maryland. He was a member of the House of Representatives, and now is a member of the Senate Judiciary Committee. He is a real leader and I think we can look forward to a thoughtful presentation.

The PRESIDING OFFICER. The Senator from Maryland does not control the time.

The Senator from Maryland is recognized.

Mr. CARDIN. Mr. President, let me first thank my colleague from Maryland for giving me the opportunity to speak, but also to thank her for her extraordinary leadership on behalf of gender equality in our Nation. Senator MIKULSKI is no stranger to this issue. She has fought her entire life on behalf of equality for all people in this country. From her days as a social worker to her service on the City Council of Baltimore and now to the Senate, she has been our leader on speaking out for what is right on behalf of women, on behalf of all of the people of our Nation. So I thank Senator MIKULSKI very much for everything she has done, not just on this issue but on so many issues that affect equality for the people of our country.

This has been an extraordinary week. On Monday we celebrated the life and legacy of Dr. Martin Luther King, Jr. Dr. King had a dream that everyone in this country would have the equal opportunity of this great land, regardless of race, religion, sexual orientation, or gender. He had a dream. Then, yesterday, we saw this Nation take a giant step forward in reaching that dream with the inauguration of Barack Obama as the 44th President of the United States. We can take another giant step forward now by passing the legislation that my colleague from Maryland is bringing forward, the Lilly Ledbetter Fair Pay Act. It is so important that we do this.

Let me give my colleagues some of the facts. They know this, but it is worth repeating. Today in the workplace women are being discriminated against. On average, women make 77 percent of what a male makes for the same work. That is unacceptable and inexcusable. We need to change that.

Lilly Ledbetter worked for 19 years at Goodyear Tire Company. It was shown that she was making $15,000 less than her male counterparts were making in the United States of America. Well, we passed legislation to make sure that could not happen and that there were rights to protect women who were discriminated against by that type of action by an employer. Lilly Ledbetter did what was right. She filed her case and it was found that, yes, she was discriminated against, but guess what. Her claim was denied by the Supreme Court of the United States by a 5-to-4 vote because she didn't bring her case within 180 days of the discrimination. She didn't know about the discrimination until a fellow worker told her about it, well past 180 days. She couldn't possibly have brought the case within 180 days.

Now it is time for us to correct that Supreme Court decision, and that is exactly what the legislation Senator MIKULSKI has brought forward will do. It will reverse the Supreme Court decision giving women and giving people of this Nation an effective remedy if an employer discriminates based upon gender.

I have listened to some of the debate on the floor. I don't want to see us put additional roadblocks in the way of women being able to have an effective remedy. I respect greatly my colleague from Texas. She is very sincere and a very effective Member of this body. However, I don't want to have lawyers debating whether a person can bring a claim, as to whether they had reasonable cause or try to think of what someone was thinking about at the time. This is very simple. If you discriminate against your employee, they should have an effective remedy. The Supreme Court turned down that remedy. The legislation that is on the floor corrects it. It is our obligation, I believe, to make sure that is done.

So I wish to take these few moments to urge my colleagues to pass the legislation that is before us. Let's not put additional roadblocks in the way. Let's not pass amendments that will become ways in which employers such as Goodyear Tire could prevent their employees from getting fair pay. The time is now. Let's pass this legislation.

I again congratulate my colleague from Maryland for her leadership on this issue.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The senior Senator from Maryland.

Ms. MIKULSKI. Mr. President, I thank my colleague for his eloquent and persuasive argument.

I rise to debate with my colleague from Texas her amendment. Before I go into the Hutchison substitute amendment, I wish to clear up two misconceptions. The first misconception is that there have been no hearings on this bill; somehow or another this is a fast-track, jerry-rigged, gerrymandered process. That couldn't be further from the truth.

In 2008, we held two hearings on Ledbetter, one in January of 2008—just about this time—in the Senate Health, Education and Labor Committee, which was a very active committee. Second, we also held a hearing in the Senate Judiciary Committee to get the extensive legal commentary. That hearing was held on September 23. There are those who would say, But that was the last Congress. Well, that was last year, but the relevant facts are the same. So there have been extensive hearings in the Senate and in the House. I believe we are following a framework for getting views through the regular process.

Now, our new President, President Barack Obama, has said very clearly that he wants to create jobs in this country. If you don't have a job, you get a chance to get one, and if you do have a job, you get a chance to hold on to it. Additionally, he said that if you have a job or you are going to get a job, you will not face wage discrimination in the United States of America. That is why he wants not only in his first 100 days, but in his first 10 days, to pass legislation that closes a loophole on wage discrimination.

That takes me to the second misconception. The Lilly Ledbetter Fair Pay Act, which I am the lead sponsor of—but I wish to acknowledge the role of Senator KENNEDY as the lead sponsor, and I am carrying this responsibility as a member of the committee. Now, the second misconception is that somehow or another the Fair Pay Act only deals with wage discrimination affecting women. Oh, no. It deals with wage discrimination affecting all people. So if you are discriminated against in your paycheck because of your race, ethnicity, religion, natural origin, or gender, this legislation will protect you. This loophole was created by the Supreme Court, and I will elaborate on that as well.

So we followed hearings. This bill, as part of President Obama's hope for America, makes sure that when you get a job or you keep your job, you will never be discriminated against in your wages. So I wanted to clear up those two misconceptions.

Now I wish to go to the Hutchison substitute. First, I wish to acknowledge the Senator from Texas, my truly very good friend, for her long-standing advocacy for women. We have worked together on a bipartisan basis for women. Her advocacy has been steadfast. She has been of particular help. We have worked together on the women's health agenda. We have mammogram standards in this country because of the Hutchison-Mikulski amendment. We have helped with breast cancer research funding because we have worked together, and I could give example after example.

I also wish to acknowledge that the Senator from Texas herself was discriminated against in the workplace. Maybe later on in the debate she will share her own very compelling personal story. So I wish to acknowledge that.

I also wish to acknowledge that we—the women of the Senate—can disagree, which she and I do tonight, without being disagreeable. There is no doubt that the Senator from Texas and I agree that we do not want wage discrimination against women. Where we disagree is not on the goal but on the means. She has her substitute, and I have, which I think is the superior framework, the Lilly Ledbetter Fair Pay Act. I wish to be clear that in this new Senate, we can offer amendments, we can have our shared goals, and we can do it in a way that is not prickly or rancorous and so on. So I wish to be able to say that. Although I disagree with her, my bill—the Kennedy-Mikulski bill—which has 54 cosponsors, simply restores the law before the Supreme Court decision. It is a legal standard that nine separate decisions in front of courts of appeal agreed with.

Let me elaborate. The Hutchison amendment acknowledges that the Supreme Court Ledbetter decision is unfair and it has closed the courthouse door for legitimate claimants. Unfortunately, Senator HUTCHISON's effort to fix Ledbetter's problem is flawed. I think it is a well-intentioned but misguided attempt. Her amendment will not fix the problem caused by the Ledbetter decision. In fact, review of her amendment leaves the core of the Ledbetter's harsh ruling intact, creating only a very narrow and vague exception. Moreover, the exception creates significant legal hurdles for those workers who try to take advantage of it.

In the Ledbetter decision, the Supreme Court said an employee must challenge pay discrimination within 180 days of the employer's initial decision to discriminate or the employee will be forever barred from enforcing her rights. This decision gave employers a free pass to continue discrimination. By keeping in place the heart of the Ledbetter decision, the Hutchison amendment would allow such injustice to continue.

The Senator from Texas says her amendment would bring balance to our antidiscrimination laws, but in reality it imposes a very unreasonable standard on workers—a standard that would be almost impossible for someone to meet.

Under the Hutchison framework, a worker would have to prove not only that she did not know she was being discriminated against but also she ''should not have been expected to have had enough information to support a reasonable suspicion of discrimination.''

How can workers prove what someone else expects of them? How does a worker prove a negative, that she didn't suspect that something in the workplace wasn't quite right? And—again quoting the Hutchison recommendation—what is a ''reasonable suspicion of discrimination''? That phrase, ''reasonable suspicion of discrimination,'' is vague, and fuzzy, and I am concerned would even add to the already legal burdens. There is no similar standard in any other discrimination law.

Workers would have to prove they could meet this vague standard before they could even raise their allegations of discrimination. This means time and resources spent on what workers knew and when they knew it instead of on the conduct of unscrupulous employers.

Even conservative commentators are worried about the Hutchison amendment. Andrew Grossman of the Heritage Foundation noted that the Hutchison amendment would fail to provide the certainty of a hard statute of limitations.

By contrast, the Lilly Ledbetter Fair Pay Act would restore a bright line for determining the timeliness of pay discrimination claims. We know employers and workers can understand this rule and live with it because it was the law of the land in most of the country for decades prior to the Ledbetter decision. Our bill would simply put the law back to what it was before the Supreme Court upended the law.

Although Senator HUTCHISON claims her amendment would protect employers from unreasonable lawsuits, it could cause an explosion in the number of lawsuits. If this amendment was adopted, workers would feel compelled to file claims quickly for fear that they would miss their statute of limitations. So the only way you can protect yourself is to file a claim because you might have a reasonable suspicion. Given the way women are treated in the workplace, you could have a reasonable suspicion every time you walk in somewhere. Workers have to run to the EEOC even if the only evidence of discrimination is rumor or speculation. This could create a very nasty and hostile work environment. Without any guidance of what constitutes a ''reasonable expectation'' or a ''reasonable suspicion'' of discrimination, workers will file a tremendous number of claims. That is just what we don't want to do. We want to return to the law.

They say the Lilly Ledbetter Fair Pay Act is only going to cause an explosion of lawsuits, but it didn't before the Supreme Court decision. In fact, we now know the Lilly Ledbetter Fair Pay Act would not cause an increase in lawsuits because it gives the workers the time they need to consider how they have been treated and try to work out solutions with employers before they get into filing complaints and also lawsuits.

You don't have to take my word for this. History proves it. The rule that workers can file claims within 180 days of receiving a discriminatory paycheck did not encourage any unreasonable number of lawsuits in the decade before the Ledbetter Supreme Court decision.

We turned to CBO, again, a pretty cut-and-dry, button-down crowd. They said this bill would not increase claims filed with the EEOC or lawsuits filed in court, meaning the Lilly Ledbetter Fair Pay Act, not the Hutchison amendment.

The best evidence the Hutchison amendment does not solve the problems caused by the Ledbetter decision is that the amendment would not have helped Lilly Ledbetter herself. Isn't that something. Under the Hutchison framework, this amendment would have tipped the scales of justice against her in favor of her law-breaking employer because it is virtually impossible to meet the reasonable expectation of a reasonable suspicion standard. Ms. Ledbetter would have been forced to spend all of her time and all of her money trying to prove that she had no reason to suspect discrimination before the EEOC or the courts could have even considered Goodyear's illegal and unfair treatment of her. Discrimination claimants face enough difficult hurdles. Brave workers, such as Lilly Ledbetter, do not need more disincentives to stand up for themselves and their rights.

The Lilly Ledbetter Fair Pay Act is a bipartisan solution. It responds to the basic injustice of the Supreme Court Ledbetter v. Goodyear decision. I urge my colleagues to vote against the Hutchison amendment and vote for the Lilly Ledbetter Fair Pay Act.

I yield the floor.

The PRESIDING OFFICER (Ms. CANTWELL). The Senator from Texas.

Mrs. HUTCHISON. Madam President, I was going to engage in a discussion with the Senator from Maryland. I see the Senator from Minnesota is in the Chamber. Is it OK to proceed?

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Madam President, I wish to talk about a couple of points that were made by the Senator from Maryland.

First, I want to say how much I appreciate her talking about how much we have done together in the Senate for women. We have made significant legislation that has improved the lives of women. She mentioned many of the bills we cosponsored.

The other one I want on the record, because I think it is so important for the homemakers of our country, is the homemaker IRA, which was the Hutchison-Mikulski bill that allows stay-at-home spouses, those who work inside the home, to put aside the same amount for retirement security that will accrue without being taxed as someone who works outside the home, which was not the case before Senator MIKULSKI and I passed our bill. It is one of the singular achievements, I think, in helping especially women who usually go in and out of the workplace to save, without being taxed every year, in a retirement account the same amount as if they work outside the home.

We have worked together, and I know we will work together on many other issues. And I hope we will end up working together on this issue because we do have the same goal, and that is to provide a fair legal process for people to have the right to sue for discrimination and the employer that is accused to have the right of defense.

I ask unanimous consent to print in the RECORD the report of the Heritage Foundation that was mentioned earlier.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Heritage Foundation, Jan. 7, 2009]

THE LEDBETTER ACT: SACRIFICING JUSTICE FOR ''FAIR'' PAY

(By Andrew M. Grossman)

Congressional leaders have said that they will fast-track the Lilly Ledbetter Fair Pay Act, a bill that would allow pay discrimination lawsuits to proceed years or even decades after alleged discrimination took place. Proponents say that the legislation is necessary to overturn a Supreme Court decision that misconstrued the law and impaired statutory protections against discrimination, but the Court's decision reflected both longstanding precedent and Congress's intentions at the time the law was passed.

In addition, eliminating the limitations period on claims would be bad policy. Since ancient Roman times, all Western legal systems have featured statutes of limitations for most legal claims. Indeed, they are so essential to the functioning of justice that U.S. courts will presume that Congress intended a limitations period and borrow one from an analogous law when a statute is silent. While limitations periods inevitably cut off some otherwise meritorious claims, they further justice by blocking suits where defensive evidence is likely to be stale or expired, prevent bad actors from continuing to harm the plaintiff and other potential victims, prevent gaming of the system (such as destroying defensive evidence or running up damages), and promote the resolution of claims. By eliminating the time limit on lawsuits, the Ledbetter Act would sacrifice these benefits to hand a major victory to trial lawyers seeking big damage payoffs in stale suits that cannot be defended.

The Ledbetter Act would also lead to myriad unintended consequences. Foremost, it would push down both wages and employment, as businesses change their operations to avoid lawsuits. Perversely, it could actually put women, minorities, and workers who are vocal about their rights at a disadvantage if employers attempt to reduce legal risk by hiring fewer individuals likely to file suit against them or terminating those already in their employ.

Rather than effectively eliminate Title VII's limitations period, Congress could take more modest, less risky steps to ease the law's restrictions, if such change is warranted. Most directly, it could lengthen the limitations period to two or three years to match the periods in similar laws. Another option is to augment the current limitations period with a carefully drafted ''discovery rule'' so that the time limit on suing begins running only when an employee reasonably suspects, or should reasonably suspect, that he or she has been discriminated against.

While either of these options would sacrifice some of the benefits of the current limitations period, they are far superior alternatives to throwing the law wide open to stale claims and abuse.

THE LEDBETTER SUIT

For all the rhetoric about the Supreme Court's Ledbetter decision—the New York Times, for one, called it ''a blow for discrimination''—it addresses not the substance of gender discrimination but the procedure that must be followed to assert a pay discrimination claim. Specifically, the case presented only the question of when a plaintiff may file a charge alleging pay discrimination with the Equal Employment Opportunity Commission (EEOC), a prerequisite to suing.

Lilly Ledbetter, who worked for Goodyear Tire and Rubber Co. from 1979 until 1998 as a factory supervisor, filed a formal EEOC charge in July 1998 and then a lawsuit in November, the same month that she retired. Her claim was that after she rebuffed the advances of a department foreman in the early 1980s, he had given her poor performance evaluations, resulting in smaller raises than she otherwise would have earned, and that these pay decisions, acting as a baseline, continued to affect the amount of her pay throughout her employment. She said she had been aware of the pay disparity since at least 1992.

Initially, Ledbetter sued under the Equal Pay Act of 1963 (EPA) and Title VII of the Civil Rights Act of 1964, a more general anti-discrimination statute. The EPA, unlike Title VII, has been interpreted not to require proof that pay discrimination was intentional but just that an employer paid an employee less for equal work without a good reason for doing so. For such claims, the EPA imposes a two-year statute of limitations, meaning that an employee can collect deficient pay from any discriminatory pay decisions made during that period, whether or not the employer intended to discriminate in any of those decisions. Title VII, while imposing a shorter filing deadline of 180 days and requiring proof of intent to discriminate, allows for punitive damages, which the EPA does not. Perhaps for this reason, Ledbetter abandoned her EPA claim after the trial court granted summary judgment on it in favor of her former employer.

On her Title VII claim, however, Ledbetter prevailed at trial before a jury, which awarded her $223,776 in back pay, $4,662 for mental anguish, and a staggering $3,285,979 in punitive damages. The judge reduced this total award to $360,000, plus attorneys' fees and court costs.

Goodyear appealed, and the Eleventh Circuit Court of Appeals reversed the decision on the grounds that Ledbetter had not provided sufficient evidence to prove that an intentionally discriminatory pay decision had been made within 180 days of her EEOC charge. Ledbetter appealed to the Supreme Court, challenging not that determination but only the Court of Appeals' application of Title VII's limitations period.

In a decision by Justice Samuel Alito, the Supreme Court held that the statute's requirement that an EEOC charge be brought within 180 days of an ''alleged unlawful employment practice'' precluded Ledbetter's suit, because her recent pay raises were not intentionally discriminatory. Ledbetter argued that the continuing pay disparity had the effect of shifting intent from the initial discriminatory practice to later pay decisions, performed without bias or discriminatory motive. The Court, however, had rejected this reasoning in a string of prior decisions standing for the principle that a ''new violation does not occur, and a new charging period does not commence, upon the occurrence of subsequent nondiscriminatory acts that entail adverse effects resulting from the past discrimination.'' For those familiar with the law, this appeared to be a rehash of a 1977 case that reached the same conclusion on identical grounds.

Thus, the Court affirmed the lower decision against Ledbetter.

THE PURPOSES OF LIMITATIONS PERIODS

That result did not speak to the merits of Ledbetter's case—that is, whether she had suffered unlawful discrimination years before—but only to the application of the statute's limitations period. Although it seems intrinsically unfair to many that a legal technicality should close the courthouse doors, statutes of limitations, as the majority of the Court observed, do serve several essential functions in the operation of law that justify their cost in terms of barred meritorious claims. In general, limitations periods serve five broad purposes.

Justice Story best articulated the most common rationale for the statute of limitations: ''It is a wise and beneficial law, not designed merely to raise a presumption of payment of a just debt, from lapse of time, but to afford security against stale demands, after the true state of the transaction may have been forgotten, or be incapable of explanation, by reason of the death or removal of witnesses.''

Indeed, Ledbetter itself illustrates this function. Different treatment, such as pay disparities, may be easy to prove even after much time has lapsed, because the kinds of facts at issue are often documented and, indeed, are rarely in dispute. More contentious, however, is the defendant's discriminatory intent, which Title VII requires in addition to proof of disparate treatment. The evidence proving intent can be subtle—for example, ''whether a long-past performance evaluation . . . was so far off the mark that a sufficient inference of discriminatory intent can be drawn.'' With the passage of time, witnesses' memories may fade, stripping their accounts of the details necessary to resolve the claim. Evidence may be lost or discarded. Indeed, witnesses may disappear or perish—the supervisor whom Ledbetter accused of misconduct had died by the time of trial. Sorting out the subtleties of human relationships a decade or more in the past may be an impossible task for parties and the courts, one at which the defendant, who did not instigate the suit, will be at a particular disadvantage. This seems to have been the case in Ledbetter.

Statutes of limitations, in contrast, require a plaintiff to bring his or her claim earlier, when evidence is still fresh and the defendant has a fair chance of mustering it to mount a defense. In this way, statutes of limitations also serve to prevent fraudulent claims whose veracity cannot be checked due to passage of time.

Second, statutes of limitations also help to effectuate the purposes of law. They encourage plaintiffs to diligently prosecute their claims, thereby achieving the law's remedial purpose. This is particularly the case for statutes such as those forbidding discrimination in employment practices, where Congress has created causes of action to supplement government enforcement actions. Litigation under such statutes is, in part, a public good, because the plaintiff in a meritorious suit secures justice not just for himself but for similarly situated victims, as well as the public at large, which has expressed its values through the law. Anti-discrimination law is the archetypical example of an area where private suits can promote far broader good. Other victims and the public are best served when workers who believe they have been subject to discrimination have the incentive to investigate the possible unlawful conduct, document it, and then challenge it in a timely fashion. This was an explicit goal of the Civil Rights Act of 1964, whose drafters reasoned that the short limitations period and mandatory EEOC administrative process would lead most discrimination complaints to be resolved quickly, through cooperation and voluntary compliance.

Third, time limits on filing lawsuits prevent strategic behavior by plaintiffs. In some cases, plaintiffs may wait for evidence favorable to the defense to disappear or be discarded, for memories to fade and witnesses to move on, before bringing claims. Particularly under laws that allow damages continuing violations or punitive damages, plaintiffs may face the incentive to keep quiet about violations as the potential pool of damages grows. Concerns that plaintiffs will game the system in this way are so prevalent that an entire doctrine of judge-created law, known as ''laches,'' exists to combat certain of these abuses. Laches, however, is applied inconsistently, and courts often decline its exercise in enforcing statutory rights. A limitations period puts a limit on the extent to which plaintiffs can game the law by delaying suit.

Fourth, time-limiting the right to sue furthers efficiency. Valuable claims are likely to be investigated and prosecuted promptly, while most of dubious merit or value are ''allowed to remain neglected.'' Thus, ''the lapse of years without any attempt to enforce a demand, creates, therefore, a presumption against its original validity, or that it has ceased to subsist.'' Statutes of limitations, then, are one way that our justice system focuses its limited resources on the most valuable cases, maximizing its contribution to the public good.

Finally, there is an intrinsic value to repose. It promotes certainty and stability. Putting a deadline on claims protects a business's or individual's settled expectations, such as accounting statements or income. At some point, surprises from the past, in the form of lawsuits, cease to be possible. As with adverse possession of land, the law recognizes that, though a wrong may have been done, over time certainty of rights gains value.

For these important reasons, statutes of limitation are ubiquitous in the law and have been since ancient Roman times. Limitations periods necessarily close the courthouse doors to some potentially worthwhile claims—an outcome so harsh that it would be ''pure evil,'' observed Oliver Wendell Holmes, if it were not so essential to the operation of law. That a single good claim has been barred, then, proves not that the deadline for suit is unfair or unwise but only that justice cannot provide a remedy in every case.

THE LEDBETTER ACT

Nonetheless, editorial reaction to Ledbetter was swift and almost entirely negative, with most writers drawing from Justice Ginsburg's bombastic dissent (which she read in part from the bench) calling the majority's reasoning ''cramped'' and ''incompatible with the statute's broad purpose.'' Ginsburg's logic, repeated on the opinion pages, and often news pages, of countless newspapers, was that Ledbetter was a member of a protected class (women), performed work equal to that of the dominant class (men), and was compensated less for that work due to gender-based discrimination. End of story. Pay discrimination, Ginsburg argued, is different than other forms of discrimination and is more akin to a ''hostile work environment'' claim, which by its nature involves repeated, ongoing conduct. But

this is creative reimagining of the statute: Nowhere in it is there any room for the limitations period present in the statute or indeed any of the other requirements that Congress crafted.

Unfortunately, though, it was Ginsburg's dissent, and her unseemly urging that ''once again, the ball is in Congress' court,'' that spurred the drafters of the Lilly Ledbetter Fair Pay Act, which was introduced soon after the Court issued its decision and passed the House in short order. The bill would adopt Ginsburg's view, amending a variety of anti-discrimination laws to the effect that a violation occurs ''each time wages, benefits, or other compensation is paid'' that is affected by any discriminatory practice. In this way, the law would simply eliminate the limitations period as applied to many cases.

Under the Ledbetter Act, employees could sue at any time after alleged discrimination occurred, so long as they have received any compensation affected by it in the preceding 180 days. While this would certainly reverse Ledbetter, it goes much further by removing any time limitation on suing in pay-related cases, even limitations relating to the employee's learning of the discrimination—an approach that is known in other contexts, such as fraud, as a ''discovery rule.'' This new rule is also broader in that it would apply to any (alleged) discrimination that has had an (alleged) effect on pay, such as an adverse promotion decision. In addition, retirees could bring suits alleging pay-related discrimination that occurred decades ago if they are presently receiving benefits, such as pensions or health care, arguably effected by the long-ago discrimination.

In these ways, the Ledbetter Act would allow cases asserting extremely tenuous links between alleged discrimination and differences in pay, which may result from any number of non-discriminatory factors, such as experience. Employers would be forced to defend cases where plaintiffs present evidence of a present wage gap, allegations of long-ago discrimination, and a story connecting the two. As wage differences between employees performing similar functions are rampant—consider how many factors may be relevant to making a wage determination—a flood of cases alleging past discrimination resulting in present disparity would likely follow passage. In addition to investigatory and legal expenses, employers will face the risk of punitive damages and the difficulty of rebutting assertions of discriminatory acts from years or decades ago.

The flood of lawsuits would not be endless, however, because, as Eric Posner observes, employers can be expected to change their hiring, firing, and wage practices to reduce the risk of lawsuits. To the extent that disparities in treatment are the result of discrimination, this may undercut its effects. But if, as Posner puts it, businesses ''start paying workers the same amount even though their productivity differs because they fear that judges and juries will not be able to understand how productivity is determined,'' the law would impose significant costs on businesses and, by extension, consumers and the economy. The result would be a hit to employment and wages, combined with higher prices for many goods and services.

Perversely, the Ledbetter Act may actually harm those it is intended to protect. In making employment decisions, businesses would consider the potential legal risks of hiring women, minorities, and others who might later bring lawsuits against them and, as a result, hire fewer of these individuals. Even though this discrimination would violate the law, it would be difficult for rejected applicants to prove. Other employers might simply fire employees protected by Title VII—and especially those who are vocal about their rights under the law—to put a cap on their legal liabilities. Again, this would be illegal, but difficult to prove.

These kind of unintended consequences have been a chief effect of the Americans with Disabilities Act, which prohibits discrimination against individuals with disabilities and enforces that prohibition through civil lawsuits. Today, the disabled earn less and work far less than they did prior to enactment of the ADA, and a number of economists, including MIT's Daron Acemoglu, blame the ADA for reducing the number of employment opportunities available to the disabled. In this way, by dramatically increasing employers' exposure to potential liability when they hire members of protected classes, the Ledbetter Act would put members of those classes at a disadvantage in the labor marketplace.

BIG PAYOFFS FOR THE TRIAL BAR

It is difficult to explain the hue and cry from parts of the bar that accompanied Ledbetter, given that the plaintiff clearly could have proceeded under the Equal Pay Act without running into a limitations period problem. One explanation is that Title VII, unlike the EPA, allows for punitive damages in addition to several years' worth of deficient pay. Had she proceeded under the EPA and prevailed, Ledbetter would have received deficient pay going back two or three years prior to filing a charge with the EEOC—about $60,000 according to the trial court. But under Title VII, the case was worth six times that amount, due to a large punitive award.

That result becomes all the more alluring to the plaintiff's bar when one considers the possibility of follow-on lawsuits and, in limited instances, class actions. A single legal victory against an employer could provide the fodder for scores of lawsuits by similarly situated employees and former employees receiving benefits, each alleging a pattern of discrimination affecting pay, as evidenced by the previous lawsuits. In this way, each lawsuit becomes easier and cheaper to bring than the last. Employers, then, would face the choice of fighting every suit with all their might—because any loss could lead to scores more—or agreeing to generous settlements, even in marginal cases, to avoid the risk of high-stakes litigation.

This may account for the trial bar's keen interest in the Ledbetter Act—it is among the top priorities of the American Association for Justice (formerly the American Trial Lawyer's Association)—despite the existence of other, less attractive statutory remedies for those who are the victims of recent or continuing discrimination or unjustified pay disparities.

SAFER SOLUTIONS

It is true, as proponents of the Ledbetter Act have noted, that the statute of limitations for Title VII is shorter than most others. There are good reasons for this, though, considering the context in which it was drafted. Chief among them, many Members of Congress, when they considered the Civil Rights Act of 1964, feared that businesses would be overwhelmed with litigation. Others favored voluntary conciliation over litigation. Some might have been concerned that evidence of discriminatory intent would fade away if the limitations period were too long. A relatively brief limitations period certainly satisfies these concerns.

But if Congress believes that it is too short, it has far less drastic and disruptive options at its disposal than effectively eliminating the limitations period altogether. It could, quite simply, extend the period to two or three years to match the EPA. This would give employees more time to uncover possible discrimination and seek remedies, without allowing a flood of lawsuits premised on aged grievances. There is also more logic to matching the more specific statute's limitations periods than leapfrogging it so dramatically.

Another option was proposed in the last Congress as the ''Title VII Fairness Act'' (S. 3209, 110th Cong.). This legislation would maintain the current limitations period but augment it with a ''discovery rule'' so that the period begins running only when the employee reasonably suspects, or should reasonably suspect, that he or she has been discriminated against. This approach has the benefit of encouraging employees to investigate and take action on worthwhile claims, while keeping many stale claims out of court. Some courts, however, might twist this looser rule to allow stale claims brought by sympathetic plaintiffs, such as Lilly Ledbetter, who learned about the possible discrimination fully six years before filing a charge. It would also undermine, somewhat, the clear bright-line rule that a hard statute of limitations provides. Nonetheless, this approach would provide far more certainty, and prove far less disruptive, than eliminating the limitations period.

A PERFECT STORM

It was a surprise to many legal observers a year and a half ago that the Ledbetter case—an unremarkable application of a rule settled 20 years prior—would attract any interest at all. But on closer examination, the course of events leading up to the Supreme Court's decision, and the reaction since, have not been by chance but by design, part of a ''perfect storm'' orchestrated by trial lawyers, wrongheaded civil rights organizations, and labor groups to achieve a radical shift in employment law. These special interests have an extensive agenda planned for the current Congress. Yet Members should consider each plank of it on the merits.

Far beyond reversing the result of a single Supreme Court decision—one that, viewed fairly, was consistent with precedent and fairly represented Congress's intentions—the Lilly Ledbetter Fair Pay Act would open the door to a flood of lawsuits, some frivolous, that employers would find difficult or impossible to defend against, no matter their ultimate merit. Rather than help employees, the bill could end up hurting them by reducing wages and job opportunities—at a time when unemployment is rising and many are nervous about their job prospects. Instead, Congress should recognize that statutes of limitations serve many important and legitimate purposes and reject proposals that would allow litigants to evade them.

Mrs. HUTCHISON. Madam President, it is very important that we have the whole legal memorandum on the Ledbetter Act and my substitute amendment. I want to read a couple of paragraphs from it. The Heritage Foundation report says:

Another option was proposed in the last Congress—

My bill—

as the ''Title VII Fairness Act.'' This legislation would maintain the current limitations period but augment it with a ''discovery rule'' so that the period begins running only when the employee reasonably suspects, or should reasonably suspect, that he or she has been discriminated against. This approach has the benefit of encouraging employees to investigate and take action on worthwhile claims, while keeping many stale claims out of court. Some courts, however, might twist the looser rule to allow stale claims brought by sympathetic plaintiffs, such as Lilly

Ledbetter, who learned about the possible discrimination fully six years before filing a charge. It would also undermine, somewhat, the clear bright-line rule that a hard statute of limitations provides. Nonetheless, this approach would provide far more certainty, and prove far less disruptive, than eliminating the limitations period.

Which the underlying bill does. I added for emphasis those last words.

It goes on to say:

Far beyond reversing the result of a single Supreme Court decision—one that, viewed fairly, was consistent with precedent and fairly represented Congress's intentions—the Lilly Ledbetter Fair Pay Act would open the door to a flood of lawsuits, some frivolous, that employers would find difficult or impossible to defend against, no matter their ultimate merit. Rather than help employees, the bill could end up hurting them by reducing wages and job opportunities—at a time when unemployment is rising and many are nervous about their job prospects. Instead, Congress should recognize that statutes of limitations serve many important and legitimate purposes and reject proposals that would allow litigants to evade them.

The full reading of this legal memorandum by the Heritage Foundation, I think, makes the case for my substitute as the right approach, giving more rights to the plaintiff but not eliminating or discriminating against the business to defend itself.

Let me make two points. My amendment codifies the employee's right to establish what he or she didn't know. It is so necessary that we have this right, and it is necessary to know when the person should have known and make that part of the record. Otherwise, it would allow a person to knowingly sit on a claim, to run up the amount that might be added to the discriminatory act in punitive damages. That should not be a part of our legal system.

There is one other point I want to make about the Supreme Court case that the Mikulski bill will overturn.

The Supreme Court separated a discriminatory pay policy from a single discriminatory act. That was their intention. It is the law today, and it would be the law under my substitute, that if there is a policy of discriminatory pay, every paycheck would be a discriminatory act. So it would continue if it were a policy. That is the law, and it should be the law, and it will be the law if my substitute is adopted.

What the Supreme Court did in the Ledbetter case was say when it is a single act of discrimination, not one that is discriminatory in policy, that should have a statute of limitations. But perhaps we could have a reasonable rebuttable presumption that the person should have known, and when the person brings the claim, that person can establish: I could not have known because we weren't allowed to talk about our pay. That could be a reason the court would say is legitimate, and it would uphold the statute of limitations.

The Senator from Pennsylvania was here earlier. He has several amendments. The Senator from Wyoming, Mr. ENZI, has an amendment. I think we can make this a good bill that everyone will think is fair, that will give more rights to the plaintiff but does not keep the defense from having a fair chance to defend the business. And I believe that is the right approach.

I hope we can pass my substitute. I hope we can continue to work on this bill so that everyone will feel good about voting for it and our businesses won't be subject to a lawsuit 10 years after an act is alleged to have occurred and have a bill run up, when maybe if we have a statute of limitations that is reasonable and you have the ability to bring it, it could even be settled right then and there so that the employer is not going to have a big expense that might even close the business and lay off more people, which is not a result any of us would want. So I hope we can write the law carefully to avoid that eventuality.

Madam President, I yield the floor.

Ms. MIKULSKI. Madam President, I know the Senator from Minnesota wishes to speak, and I also know the Senator from New Jersey is here. I believe we are going to turn next to the Senator from New Jersey.

Madam President, while the Senator from New Jersey, who just arrived, is still organizing, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MENENDEZ. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MENENDEZ. Madam President, is there a time limitation?

The PRESIDING OFFICER. There is not.

Mr. MENENDEZ. Madam President, I rise today to support the Lilly Ledbetter Fair Pay Act in order to defend the Civil Rights Act of 1964 and to protect all Americans from the evils of discrimination.

Yesterday, millions of Americans rejoiced as Barack Obama was sworn in as the 44th President of the United States. Hope for a more inclusive America, a more unified America, a more just America swept across this land from our biggest cities to our smallest towns. There was a sense of wonder that someone who wouldn't have been allowed to eat in certain restaurants or drink from certain water fountains over 40 years ago had just become the freely elected leader of the greatest country on Earth. We should be incredibly proud of the progress we have made since the errors of slavery and Jim Crow.

But while we believe our Union can be perfected, we know it still isn't perfect. We know that equal opportunity and impartial justice for all have yet to be attained. And we know what the consequences are, for, as Dr. King so eloquently put in his letter from a Birmingham jail, ''Injustice anywhere is a threat to justice everywhere.''

Despite the progress we have made, we live in a country where women still earn 78 cents for every dollar a man makes, where African Americans earn only 80 cents for every dollar a White man makes and Latinos earn only 68 cents for every dollar a White man makes. Our country, therefore, is still far from perfect.

Today, the Senate has a historic opportunity to narrow the gap between our ideals and our practices. We have the opportunity to say that women should be treated the same as men. We have the opportunity to say that people should be fairly paid for their labor. We have the opportunity to loudly proclaim in a unified voice that discrimination will not be tolerated in America.

As of last year, after a misguided Supreme Court decision overturned what had been the law of the land for decades, a worker can't bring an action for wage discrimination if the original decision to discriminate happened more than 180 days beforehand. The Supreme Court said employers can get away with discrimination if they hide it long enough, even though the effects of that bigotry have no expiration date.

The Lilly Ledbetter Fair Pay Act would recognize the long-term, continuous, systemic discrimination as it really is and not let offending companies get away with it through loopholes and disinformation. If a woman sees her wages continuously fall behind those of her male counterparts or a worker gets paid a wage far lower than the company average just because she is Black, they should be able to challenge their employers even if the original decision to discriminate was made years ago.

Narrowly defining discrimination as merely the original decision to discriminate makes no sense at all. Let's say, for example, that a criminal hacks into your bank account and decides to steal a portion of your paycheck every 2 weeks. If we were to apply a precedent similar to the Ledbetter case, if the hacker doesn't get caught 180 days after the initial decision to hack in, he can keep stealing forever with no fear of prosecution. Current discrimination law makes about that much sense.

Now, some of my colleagues on the other side of the aisle will ask why workers often don't file their claim within 180 days from the first instance of discrimination. Well, there are several reasons. To begin with, workers generally find it difficult to compare their salaries to coworkers, and many businesses actually prohibit it. Even if a worker sees her pay is lower than her coworkers, she might not recognize it was a result of discrimination. And if workers do recognize it as discrimination, they often wait to contact the EEOC—the Equal Employment Opportunity Commission—or decide not to due to feeling ashamed or more often they fear retaliation by their company.

They fear the consequences of ''rocking the boat'' and figure a job in which they are discriminated against is better than being fired and having no job at all. And certainly, in these incredibly tough economic times, that is a rising reality. To make matters worse, skyrocketing unemployment rates have only put these vulnerable workers in a more precarious and often helpless position.

Some of my Republican colleagues will also argue that this legislation will open the floodgates, leading to thousands of lawsuits claiming wage discrimination. But this argument simply has no merit. For over 40 years, the courts have interpreted the Civil Rights Act of 1964 to be consistent with the Lilly Ledbetter Fair Pay Act. Eight out of nine appellate courts interpreted it that way, and yet there was no flood of litigation then, nor will there be after we enact this vital piece of legislation into law.

Some of my conservative colleagues will argue that this legislation will make companies liable for decades of backpay and will encourage workers to intentionally delay and file claims years later when those accused might no longer be around to defend themselves. Again, these arguments simply ignore the facts. Under this legislation, backpay would be capped at 2 years regardless of how long the victim was discriminated against and the burden to prove discrimination took place is borne by the worker. Any lack of witnesses available to testify would only hurt the worker's efforts to prove their case.

Critics who say this legislation will cripple businesses miss the point. The fact is that companies following the law are currently put at a competitive disadvantage compared to those who exploit their workers. The executive director of the U.S. Women's Chamber of Commerce—a strong business advocacy group—succinctly noted:

The Lilly Ledbetter Fair Pay Act rewards those who play fair—including women business owners—unlike the Supreme Court's decision, which seems to give an unfair advantage to those who skirt the rules.

So we have a strong business advocacy group saying treat those who are obeying the law as it was intended and as it, in fact, has been pursued for over four decades in a way that doesn't put them at a competitive disadvantage. The vast majority of businesses that practice legal hiring procedures will not have to change anything and will no longer be punished for doing the right thing.

Wage discrimination is real. The Fair Pay Act would strike a clear blow against it. So we have to make sure to keep the legislation strong. Unfortunately, I am afraid the amendment offered by our colleague from Texas, Senator HUTCHISON, would severely undermine it. That amendment would require people to prove they had no reason—no reason—to suspect their employer was discriminating against them in 180 days. The amendment is pretty confusing just on its face. I have to ask, how does an employee prove she doesn't suspect discrimination? And when should she have to? In general, I don't see how it is relevant whether a victim suspects discrimination; the issue is whether there is discrimination. If it is happening, it has to be stopped, plain and simple. You can't ultimately be in a position in which you are allowed to discriminate and get away with it. If we send that message in our society, then all the progress we have made will be rolled back.

Madam President, I would like to believe that every Member of this body champions principles of equality, justice, and liberty as much as I do. But principles are meaningless without practice. Without vigilantly ensuring that no person is discriminated against because of their gender, their race, their religion, their ethnicity, or their sexual orientation, our principles become just empty words.

I would like to remind my colleagues that inaction on this issue is akin to tacit acceptance. And as Dr. King said:

We will remember not the words of our enemies but the silence of our friends.

I urge my colleagues to remember those wise words and put their votes where their values are by supporting this vital piece of civil rights legislation.

I thank my distinguished colleague from Maryland for leading the charge. She has been an exceptional fighter on this issue, and I know she will soon see the fruits of her labor, not for herself and her advocacy but for millions of women, Latinos, and African Americans who find themselves discriminated against and who deserve the ability for all to be able to enjoy the fruits of their labor without such discrimination.

Madam President, I thank my distinguished colleague from Minnesota for allowing me to move forward in this time, during this process, and I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Ms. KLOBUCHAR. Madam President, I am proud to join with Senator MIKULSKI and so many others in calling for the Senate to take up and pass the Lilly Ledbetter Fair Pay Act and to do it as soon as possible.

Many here have told Lilly Ledbetter's story, so I am not going to go through it again. But I will tell you, sometimes when you get to know someone, as I have gotten to know Lilly Ledbetter as a person, it means more to you. It is like when someone is arguing against a change in the law, and they suddenly find it happens to their own wife or their own daughter, they start to feel a little differently about it. So that is why I believe it is very important to do this and to make this as simple as possible and as easy as possible in order to make sure there is not discrimination in the workplace, because it is a sad reality, that still, 88 years after the 19th amendment gave women equal voting power, and 45 years after the passage of the Equal Pay Act, it still takes women 16 months to earn what men can earn in 12 months.

I have been listening to some of the arguments made today. I was picturing what would happen if, in fact, that Supreme Court decision stayed in place, which basically said that you are supposed to somehow figure out you are being discriminated against. It says it doesn't matter if you knew or not. If it happens, you have to sue right away. I was thinking how that would work in reality, how you are supposed to find out and how Lilly Ledbetter was supposed to find out. It would be as if Senator MENENDEZ and I worked in the same company and we were doing the same job and both doing it well and he was paid more than I was. How would you know that, if you are an employee at a workplace? Are you supposed to start snooping through their paychecks and opening them and trying to figure out how much he is paid? I don't think a normal person would do that.

Are you supposed to start getting to know the people who work around him to find out how much money he makes, see if he told anyone, start asking around about your fellow employee? This doesn't make sense in the real world workplace, and it certainly, as has been pointed out, is not consistent with 40 years of law in this area.

Today we have before us the Hutchison amendment. I appreciate the work of Senator HUTCHISON in so many areas, how the women of the Senate work on a bipartisan basis, but I believe in the end this amendment is wrong. What this amendment basically says is you are not going to be able to bring any kind of claim of discrimination, even a valid one, without having to go through a bunch of hoops and dot a bunch of I's and cross a bunch of T's that is very hard to do. Again, if you want to make sure this discrimination doesn't take place, make it a clear rule, make it a bright-line rule, as we do in so many other employment cases.

Under the Hutchison amendment, our workers are subject to that Supreme Court decision in Ledbetter, unless they can prove they had no reason to suspect that their employer was discriminating against them.

Again, I believe this is done for good motives, in the spirit of some kind of compromise. But, again, I try to look at the real world and think: How would you be able to prove this? Maybe things happen in the real world, maybe one of your work colleagues—if Senator MENENDEZ and I were working in the same factory and maybe someone else, maybe you, the Presiding Officer, also worked there and maybe sometime at a coffee break you said: You know, I think he is making more money than you are, and it goes away and nobody talks about it. Would that be enough? Would that be enough to show a suspicion that you thought you were being

discriminated against, that he was making more money?

What if he bought a new car, a nice new car. He is driving around in that nice car and people are starting to think: I wonder if he got a raise. Is that a suspicion that he is making more money? What if you just think he is making more money and you tell one person on the phone, but you don't know for sure?

When you start thinking this through, you realize why this standard, this ''reasonable suspicion'' standard, doesn't appear in our employment statutes. It is because it is simply unworkable as a standard, despite the good motivation to try to come up with some understanding, some kind of compromise. It doesn't make any sense. It is based on rumor.

I believe there are enough rumors around this place without starting to put them into law. A rumor starts somewhere. It changes someplace else. By the time it comes back to you, it is totally different, and I would rather not write rumors and suspicions into the law. I prefer a bright-line rule.

As has also been mentioned by some of my colleagues, we have not seen this unfair rush of litigation under the existing law. In fact, under this, if you have suspicions, it would force you to try to rush to file your claim. I think a good argument could be made—we don't know for sure, but a good argument could be made it would actually lead to more claims. This idea that it would force a worker, put the burden on the worker to spend time and money trying to meet this complicated standard that does not appear anywhere else in the law deprives employers and employees of a clear bright-line rule for determining the timeliness of claims.

I know from my work in the private sector for 13 years, people prefer bright-line rules. It makes it easier for everyone.

One of the arguments made is that somehow this would allow some raving employee, some mad employee to go back—they would simply hide their case so no one would know about it so they could keep getting backpay. This argument defies the actual rules. What are the actual rules? It says you can go back for only 2 years. Look what happened in the Lilly Ledbetter case. She went to her trial. The jury awarded her a big amount, but then it had to be reduced because the law acknowledged this, the argument made of the difficulty, and said you can only go back for 2 years. The law also has caps on damages for major employers. I think it is something like $300,000. There are caps. There are look-back rules that get to the argument that was made here. You can see it right in the Ledbetter case, if you do not believe me. The money was reduced because of those rules that are in place.

Why suddenly we would put in a standard that we do not have in the law today, when, in fact, we have that 2-year backpay rule to protect against exactly the arguments that were being made, and we have caps in place?

The Lilly Ledbetter Fair Pay Act is the only bill that gives employees the time to consider how they have been treated and try to work out solutions with their employers. That often happens. We encourage that. We would like that to happen. You don't want everyone running into court. It fulfills Congress's goals, creating incentives for employers to voluntarily correct any disparity in pay they find, and it ensures that employers do not benefit from continued discrimination. That is all it does. It is simple.

Let me tell you a little story from the State of Minnesota to end here, why I care about this so much. That is that my grandpa was a miner up in northern Minnesota. He worked hard his whole life. He never graduated from high school, saved money in a coffee can to send my dad to college. He worked hard in those mines. It was a rough-and-tumble world up in the mines of northern Minnesota.

In the mine next door to where my grandpa worked, there were a number of women—decades later, after my grandpa worked there—who started working in the mines. It was not an easy life. If anyone has seen the movie ''North Country,'' that was the basis of the movie. It happened in the mines. My relatives were right next door.

The women there were discriminated against. I am not sure of all the details. Maybe some of it was pay, but some of it was just discriminatory treatment. It went on and on. It was an example, if you have seen that movie, of how difficult it was for them to get the gumption to stand and finally file suit because they liked these guys. They were their coworkers. They worked with them. They wanted to fit in and they tried so hard. Eventually, they brought a lawsuit, but it took time for them to be able, in that hard, rough-and-tumble world of those iron ore mines, to bring that lawsuit.

They eventually did and they eventually won that suit at great personal sacrifice to them, as documented in that movie, ''North Country.''

Things changed as a result of that lawsuit at the mines. It was not a popular thing they did. It is not even popular right now. But things changed in those mines. When I ran for the Senate, the first endorsement I got was from the United Steelworkers. The guy who gave it to me was the guy who was the union steward, the same guy, Stan Daniels, at that mine at that time, that was the subject of the lawsuit.

I got elected the first woman Senator from Minnesota. The world changes. That is why this bill is so important, to maintain that right of workers. I know in my State there is lots of the discriminatory treatment going. The world changes as people realize and understand the law and employers are educated on the law, but we still need that safety valve in place. We still need those protections in place so workers can get paid fair pay for what they do.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Ms. MIKULSKI. Madam President, we are awaiting the arrival of the distinguished ranking member of the Health, Education, Labor, and Pensions Committee because he wishes to offer an amendment this evening. We wish to accommodate him. The Senator from Wyoming has been the soul of civility on this issue and has helped us to move the bill thus far. But it is our intention to ask all speakers to come now because the Senator from Texas and I would like to be able to conclude this debate for this evening—not to conclude the debate, but for this evening—around 7. I am not making a unanimous consent request, I just wish to put a few things out there.

While we are waiting for the arrival of our colleague from Wyoming, I would like to have printed in the RECORD an excellent monograph put out by the National Women's Law Center on the Hutchison amendment. It is a very lawyer-like paper, but it is also done in plain English. That outlines some of the real issues the Hutchison substitute could present.

I ask unanimous consent that this paper in its entirety be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Ms. MIKULSKI. Just to give a few highlights, they advise us that the Hutchison bill allows clear pay discrimination to continue without a remedy. That is why we are doing this Lilly Ledbetter Fair Pay Act in the beginning. They make that point because they say:

> The Hutchison bill prevents employees from challenging discrimination to which they continue to be subject. [It] perpetuates the basic problem created by the Ledbetter decision.

That is what I argued earlier in the evening.

> Under the bill, employers are left without any remedy against present and continuing pay discrimination if they do not file a government complaint within 180 days of the first day when they ''have or should be expected to have'' enough information to suspect discrimination.

One of the main arguments, the differences we have with our colleague from Texas, is the should have, we should have, we should have known—how should you have known?

When you go into a workplace, one of the few things that is not discussed is pay. I commented in an earlier debate, you can talk about anything in the workplace. You can talk about religion at the water cooler. You can talk about politics at the Xerox machine. But you cannot talk about pay. This could have, should have—we don't want to have a framework where everyone who has been discriminated against by our culture and by our practice in the

workplace goes into a new job with a chip on their shoulder. We are going to presume people are fair-minded. That is the way most people show up every day. This Hutchison amendment, could have, would have, should have, I think is going to create a nightmare. It is going to do exactly what the Senator doesn't want. I think it is going to generate more lawsuits and not only more lawsuits but more lawyers arguing about could have or should have suspected.

The Hutchison bill permits employers to escape accountability for continuing pay discrimination. Like the Ledbetter decision, the Hutchison substitute immunizes an employer from any challenge to pay discrimination, even where the employer continues to profit from it. Under the Hutchison bill, an employer is off the hook for, and can continue to gain a windfall from, continued pay discrimination. . . .

You know, when you discriminate, you don't usually just discriminate against one person in the company. It is usually more than one—others. Again, we are back to this would have, should have, could have.

The Hutchison bill deprives employees of the chance to assess the extent of the discrimination and work voluntarily with their employers to address any disparities.

[It] forces employees to forfeit their claims if they take the time to work out disputes amicably.

That is exactly what we want. We want to be able to work out disputes amicably, to go to maybe some alternative dispute resolution mechanism, have time to find out the facts: What is the situation? Particularly because pay disparity may start small and grow over time. Employees may want to give their employers the benefit of the doubt hoping the employers will voluntarily remedy that gap or may want to work actively with the employer to resolve the dispute. This is especially true for employees new on the job. The Hutchison amendment denies employees this opportunity, forcing them from the get-go to file adversarial Government complaints immediately upon suspecting discrimination or risk losing the right to any relief.

Now, not only is this bad law, it is bad policy, and it is going to be bad budget. I chair the Appropriations Committee which funds the EEOC. Under the administration that left town, they were revenue starved. They have a tremendous backlog right this minute of a variety of discrimination cases. Some were wages, some dealing with gender or race or ethnicity or religion. Many of those workers really feel under siege with the workload they are going to carry. Under the Hutchison amendment, as soon as you walk into your workplace and you have a whiff, a rumor, gossip, or, oh, gee, wonder what is going on, then you have to run right to the EEOC and file a complaint.

I do not think that is good common sense. It sure is not good money sense from the strain it is going to put already on an overburdened EEOC. I think we are headed in the wrong direction.

This Hutchison bill creates burdensome and expensive, time-consuming distractions from the fundamental issue of whether an employee has been subject to pay discrimination. I fear that the Hutchison bill will increase the number of lawsuits filed against employers, and it is going to result in very protracted and very expensive minitrials in those cases that are brought.

We want to get into making sure we end wage discrimination. This bill will result in confusion for the courts and for employers. This bill rejects the bright-line familiar rule in effect before the Ledbetter decision in favor of a standard that raises numerous thorny legal and factual issues.

I like the Ledbetter Fair Pay Act, which is my bill, and also is sponsored by 54 other Members of the Senate which simply restores the familiar role for assessing the timeliness of discrimination claims that prevailed in virtually every court in this country prior to the Ledbetter decision. The Hutchison bill creates an entirely new legal regime.

The bill raises innumerable questions, including when an employee could have been found to have a ''reasonable suspicion of discrimination.''

Madam President, I have more arguments to make, but at the end of the day, why is the Lilly Ledbetter Fair Pay Act so excellent? Well, the bill from the viewpoint that I am advocating and the legislation that I am sponsoring would give employees the time to evaluate their suspicions of discrimination and work toward solutions with their employers, including voluntarily.

It would ensure that employers are held accountable for continued discrimination and, most of all, it would provide certainty in assessing the timeliness of pay discrimination claims and restore the law before the outrageous Supreme Court decision.

Congress should reject the approach of the Hutchison bill and instead act expeditiously to enact the Lilly Ledbetter Fair Pay Act.

EXHIBIT 1

[From the National Women's Law Center]

THE TITLE VII ''FAIRNESS'' ACT, S. 3209, ALLOWS PAY DISCRIMINATION TO CONTINUE

On May 20, 2007, in Ledbetter v. Goodyear Tire & Rubber Co., the Supreme Court held that employees must file claims with the government for compensation discrimination within 180 days of an employer's initial decision to discriminate or be barred from future challenges—no matter how long the discrimination has continued. The Court's decision upends decades of prior precedent and is fundamentally unfair to those subject to pay discrimination. Under the Ledbetter rule, employees have no recourse—and employers have no accountability—for continuing discrimination once 180 days have passed from the initial pay decision.

In July, 2007, the House of Representatives passed the Lilly Ledbetter Fair Pay Act to overturn the Ledbetter ruling. The Act would restore the law that applied virtually everywhere in the country before the Supreme Court's decision—that each discriminatory paycheck constitutes an act of discrimination that can be challenged. The Senate's vote on a motion to advance the Ledbetter Fair Pay Act fell just three votes short of passage in April of 2008.

In June, Senator Hutchison (together with other Senators who voted against advancing the Ledbetter Fair Pay Act) introduced S. 3209, an alternative titled the Title VII Fairness Act. But unlike the Ledbetter Fair Pay Act, the Hutchison bill fails to restore prior law or solve the problems created by the Ledbetter decision; it instead creates damaging new legal hurdles for people receiving discriminatory pay to overcome. Indeed, the Hutchison bill stands to set back basic anti-discrimination protections in the workplace even beyond equal pay.

The Hutchison bill allows clear pay discrimination to continue without a remedy.

The Hutchison bill prevents employees from challenging discrimination to which they continue to be subject. The Hutchison bill perpetuates the basic problem created by the Ledbetter decision. Under the bill, employees are left without any remedy against present, continuing pay discrimination if they do not file a government complaint within 180 days of the first day when they ''have or should be expected to have'' enough information to suspect discrimination.

The Hutchison bill permits employers to escape accountability for continuing pay discrimination. Like the Ledbetter decision, the Hutchison bill immunizes an employer from any challenge to pay discrimination even where the employer continues to profit from it. Under the Hutchison bill, an employer is off the hook for, and can continue to gain a windfall from, continued pay discrimination that is not immediately challenged when the employee first ''should have'' suspected it.

The Hutchison bill deprives employees of the chance to assess the extent of the discrimination and work voluntarily with their employers to address any disparities.

The Hutchison bill forces employees to forfeit their claims if they take the time to work out disputes amicably. Particularly because pay disparities may start small and grow only over time, employees may want to give their employers the benefit of the doubt, hoping that the employers will voluntarily remedy the pay gap—or may want to work actively with their employers to resolve the dispute over time. This is especially true if an employee is new on the job. But the Hutchison bill denies employees this opportunity, forcing them to file adversarial government complaints immediately upon suspecting discrimination or risk losing the right to any relief.

The Hutchison bill denies employees adequate time to assess the merits of their claims. Particularly because employees subject to pay discrimination may be in an ongoing relationship with an employer, they are likely to want to be sure that they have meritorious claims before filing a government challenge to their employers' practices. But the Hutchison bill limits employees' ability to take the time necessary to confirm their suspicions of discrimination or act when the problem reaches serious proportions.

The Hutchison bill creates burdensome, expensive and time-consuming distractions from the fundamental issue of whether an employee has been subject to pay discrimination.

The Hutchison bill will increase the number of lawsuits that are filed against employers. Employees who suspect discrimination will be forced to file preemptive claims to avoid forfeiting their rights. The Hutchison bill will thus increase the amount of litigation that occurs.

The Hutchison bill will result in protracted and expensive mini-trials in the cases that are brought. Employers and employees will be forced to engage in costly battles before even getting to the merits of a discrimination dispute—that is, whether a pay decision was, in fact, based on sex, race, disability or another prohibited ground. A court will have to resolve multiple threshold issues, including what the employee suspected about pay discrimination and when s/he suspected it. On top of that, even if an employee in fact had no suspicion of discrimination, she will have to prove that her failure to suspect was reasonable. These time-consuming battles will only add to the cost and burdensomeness of litigation—and will increase the difficulty employees denied equal pay will have in getting the wages they have earned.

The Hutchison bill will result in confusion in the courts and for employers.

The Hutchison bill rejects the bright-line, familiar rule in effect before the Ledbetter decision in favor of a standard that raises numerous thorny legal and factual issues. Unlike the Ledbetter Fair Pay Act, which simply restores the familiar rule for assessing the timeliness of pay discrimination claims that prevailed in virtually every court in the country prior to the Ledbetter decision, the Hutchison bill creates an entirely new legal regimen. The bill raises innumerable questions, including when an employee can be found to have a ''reasonable suspicion of discrimination.''

The Hutchison bill will result in inconsistent standards for employers in different parts of the country for years to come. Because courts will likely reach different conclusions on the many legal and factual questions raised by the bill, employers in different parts of the country will likely be subject to conflicting rules, making it difficult, if not impossible, to understand their legal obligations. It will be years, if not decades, before these questions are authoritatively resolved by the Supreme Court.

The Hutchison bill could limit protections for employees in contexts beyond pay discrimination.

The Hutchison bill is not restricted to pay discrimination. The so-called Title VII Fairness Act applies to any unlawful employment practice under the anti-discrimination laws. As a result, it goes well beyond the targeted, restorative approach of the Ledbetter Fair Pay Act.

The Hutchison bill could have particularly troubling impact on harassment claims. Under current law, employees can bring harassment claims as long as any incident of ongoing harassment occurs within 180 days prior to the complaint—regardless of how many incidents have occurred previously. It is predictable that some employers would use this bill's broad scope to try to escape their responsibility for sexual harassment and other types of discrimination.

The Hutchison bill responds to a purported ''problem'' that is, in fact, wholly invented.

Employees have no incentive to delay filing pay discrimination claims. Because employees typically cannot afford to struggle without pay to which they are legally entitled, it is simply a red herring to suggest that they will delay filing pay discrimination for years, or even decades. Furthermore, because Title VII has a two-year limit on the back pay that any plaintiff can receive, that means that if they delay they will lose compensation for all but the last two years of pay discrimination they suffer. Therefore, there is every incentive for an employee to file a pay discrimination complaint as soon as reasonably possible. It is the employer, not the employee, who benefits from any delay.

Employers were satisfied with the rules in place before the Ledbetter decision. Prior to the Ledbetter decision, employers were not asking for a change to the longstanding rules relating to the timeliness of pay discrimination claims that the Ledbetter Fair Pay Act restores. There is no evidence that the operation of the rule prejudiced employers or resulted in the success of non-meritorious claims. In fact, employers benefited from the certainty of the rule in place before Ledbetter.

The Lilly Ledbetter Fair Pay Act is the only bill that will address the basic pay discrimination that Lilly Ledbetter, and others like her, suffer.

The Ledbetter Fair Pay Act is the only bill that would have helped Lilly Ledbetter. Under the Hutchison bill, Lilly Ledbetter—to whom a jury awarded more than $3 million in damages for the egregious discrimination she endured—would have been embroiled in protracted arguments about what she knew about her workplace and when. A court would have had to decide, for example, whether idle gossip and boasting by her coworkers—who had harassed and lied to her in the past—were sufficient to give Ms. Ledbetter a ''reasonable suspicion'' of discrimination. By contrast, the Ledbetter Fair Pay Act creates a bright line rule that would ensure the timeliness of claims like Ms. Ledbetter's, when the pay continues into the present.

The Ledbetter Fair Pay Act is the only bill that corrects the problems with the Supreme Court opinion. Unlike the Hutchison bill, the Ledbetter Fair Pay Act would:

Give employees the time to evaluate their suspicions of discrimination and work toward solutions with their employers;

Ensure that employers are held accountable for continued discrimination;

Provide certainty in assessing the timeliness of pay discrimination claims;

Restore the law.

Congress should reject the approach of the Hutchison bill and should instead act expeditiously to enact the Lilly Ledbetter Fair Pay Act.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Madam President, I know the Senator from Rhode Island wants to speak. I will take a minute and say a couple of things.

We are going to codify a right that is not in the law today. It is sometimes applied by judges and sometimes not. We do clarify so that there is fairness for the employee as well as for the small business owner to know if something is occurring.

Our standard is, should have known, and that is what the person can show, that they had no way to know that a discrimination was occurring. We are clarifying and trying to make it more fair and more clear and more uniform across all the districts in our country.

That is our goal, and I do hope we will be able to have this amendment that will make it a law that is better for employees who might have been discriminated against, but also give the fair right to an employer not to have a right sat on and built up so that it becomes something that could hurt the small business and be unexpected.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. Madam President, I ask unanimous consent to speak as in morning business for up to 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

ACCOUNTABILITY

Mr. WHITEHOUSE. Madam President, I rise as we celebrate a new President, a new administration, a new mode of governing, and a new future for America.

Even in the gloom of our present predicaments, Americans' hearts are strong and confident because we see a brighter future ahead. President Obama looks to that future. Given the depth and severity of those present predicaments, we need all his energy to look forward to lead us to that brighter day, forward to what Winston Churchill in Britain's dark days called ''broad and sunlit uplands.'' But as we steer toward this broad and sunlit future, what about the past?

As the President looks forward and charts a new course, must someone not also look back to take an accounting of where we are, what was done, and what must now be repaired? Our new President has said, ''America needs to look forward.'' I agree. Our new Attorney General-designate has said: We should not criminalize policy differences. I agree, and I hope we can all agree that summoning young sacrificial lambs to prosecute, as we did after Abu Ghraib, would be reprehensible.

But consider the pervasive, deliberate, and systematic damage the Bush administration did to America, to her finest traditions and institutions, to her reputation, and integrity. I evaluate that damage in history's light. Although I am no historian, here is what I believe: The story of humankind on this Earth has been a long and halting march from the darkness of barbarism and the principle that to the victor go the spoils, to the light of organized civilization and freedom.

During that long and halting march, this light of progress has burned, sometimes brightly and sometimes softly, in different places at different times around the world.

The light shone in Athens, when that first Senate made democracy a living experiment, and again in the softer but broader glow of the Roman Empire and Senate. That light burned brightly, incandescently, in Jerusalem, when Jesus of Nazareth cast his lot with the weak and the powerless.

The light burned in Damascus, Baghdad, Cairo, and Cordoba, when the Arab world kept science, mathematics, art, and logic alive, as Europe descended into Dark Ages of plague and violence.

The light flashed from the fields of Runnymede when English nobles forced King John to sign the Magna Carta, and it glowed steadily from that island kingdom as England developed Parliament and the common law and was the first to stand against slavery.

It rekindled in Europe at the time of the Reformation, with a bright light flashing in 1517 when Martin Luther nailed his edicts to the Wittenberg Cathedral doors, and faced with excommunication stated: ''Here I stand. I can do no other.''

Over the years, across the globe, that light, and the darkness of tyranny and cruelty, have ebbed and flowed. But for the duration of our Republic, even though our Republic is admittedly imperfect, that light has shown more brightly and more steadily in this Republic than in any place on Earth as we adopted the Constitution, the greatest achievement yet in human freedom; as boys and men bled out of shattered bodies into sodden fields at Antietam and Chickamauga, Shiloh, and Gettysburg to expiate the sin of slavery; as we rebuilt shattered enemies, now friends, overseas and came home after winning world wars; and as we threw off bit by bit ancient shackles of race and gender to make this a more perfect Union for all of us.

What has made this bright and steady glow possible is not that we are better people, I believe, but that our system of government is government of the people, by the people, and for the people. Why else does our President take his oath to defend the Constitution of the United States of America? Our unique form of self-government is a blessing, and we hold it in trust, not just for us but for our children and grandchildren down through history; not just for us but as an example out through the world.

That is why our Statue of Liberty raises a lamp to other nations still engloomed in tyranny. That is why we stand as a beacon in this world, beckoning to all who seek a kinder, freer, brighter future.

We hold this unique gift in trust for the future and for the world. Each generation assumes responsibility for this Republic and its Government, and each generation takes on a special obligation when they do. Our new President closed his inaugural address by setting forth the challenge by which future generations will test us: Whether ''with eyes fixed on the horizon and God's grace upon us, we carried forth that great gift of freedom and delivered it safely to future generations.''

There are no guarantees that we will. This is a continuing experiment we are embarked upon and a lot is at stake. Indeed, the most precious thing of man's creation on the face of this Earth is at stake. That is what I believe.

So from that perspective, what about the past? No one can deny that in the last 8 years America's bright light has dimmed and flickered, darkening our country and darkening the world. The price of that is incalculable. There are nearly 7 billion human souls in this world. Every morning, the Sun rises anew over their villages and hamlets and barrios, and every day they can choose where to invest their hopes, their confidence, and their dreams.

I submit that when America's light shines brightly, when honesty, freedom, justice, and compassion glow from our institutions, it attracts those hopes, those dreams, and the force of those 7 billion hopes and dreams, the confidence of those 7 billion souls and our lively experiment is, I believe, the strongest power in our national arsenal, stronger than atom bombs. We risk it at our peril.

Of course, when our own faith is diminished at home, this vital light only dims further, again, at incalculable cost. So when an administration rigs the intelligence process and produces false evidence to send our country to war; when an administration descends to interrogation techniques of the Inquisition of Pol Pot and the Khmer Rouge, descends to techniques that we have prosecuted as crimes in military tribunals and Federal trials; when institutions as noble as the Department of Justice and as vital as the Environmental Protection Agency are systematically and deliberately twisted from their missions by odious means of institutional sabotage; when the integrity of our markets and the fiscal security of our budget are open wide to the frenzied greed of corporations, speculators, and contractors; when the integrity of public officials, the warnings of science, the honesty of government procedures, and the careful historic balance of our separated powers of government are all seen as obstacles to be overcome and not attributes to be celebrated; when taxpayers are cheated and the forces of government ride to the rescue of the cheaters and punish the whistleblowers; when a government turns the guns of official secrecy against its own people to mislead, confuse, and propagandize them; when government ceases to even try to understand the complex topography of the difficult problems it is our very purpose and duty to solve and instead cares only for those points where it intersects with party ideology so that the purpose of government becomes no longer to solve problems but only to work them for political advantage; in short, when you have pervasive infiltration into all the halls of government—judicial, legislative and executive—of the most ignoble forms of influence; when you see systematic dismantling of historic processes and traditions of government that are the safeguards of our democracy; and when you have a bodyguard of lies, jargon, and propaganda emitted to fool and beguile the American people, well, something very serious in the history of our Republic has gone wrong, something that dims the light of progress for all humanity.

As we look forward, as we begin the task of rebuilding this Nation, we have an abiding duty to determine how great the damage is. I say this in no spirit of vindictiveness or revenge. I say it because the thing that was sullied is so precious. I say it because the past bears upon the future. If people have been planted in government in violation of our civil service laws to serve their party and their ideology instead of serving the public, the past will bear upon the future. If procedures and institutions of government have been corrupted and are not put right, that past will assuredly bear on the future.

In an ongoing enterprise such as government, the door cannot be so conveniently closed on the closets of the past. The past always bears on the future. Moreover, a democracy is not just a static institution. It is a living education, an ongoing education in freedom of a people.

As Harry Truman said, addressing a joint session of Congress back in 1947:

> One of the chief virtues of democracy is that its defects are always visible, and under democratic processes can be pointed out and corrected.

Entirely apart from tentacles of the past that may reach into the future are the lessons we as a people have to learn from this past carnival of folly, greed, lies, and sabotage, so that it can, under democratic processes, be pointed out and corrected. If we blind ourselves to this history, if we pull an invisibility cloak over it, we will deny ourselves its lessons. Those lessons came at too painful a cost to ignore. Those lessons merit discovery, disclosure, and discussion. Indeed, disclosure and discussion is the difference between a valuable lesson for the bright upward forces of our democracy and a blueprint for darker forces to return and do it all over again.

A little bright, healthy sunshine and fresh air so that an educated population knows what was done and how can show where the tunnels were bored, when the truth was subordinated, what institutions were subverted, how our democracy was compromised; so this grim history is not condemned to repeat itself; so a knowing public, in the clarity of day, can say: Never, never, never again; so we can keep that light, that light that is at once America's greatest gift and greatest strength brightly shining. To do this, I submit, we must look back.

I yield the floor.

The PRESIDING OFFICER (Mr. BEGICH). The Senator from Wyoming is recognized.

AMENDMENTS NOS. 28 AND 29, EN BLOC

Mr. ENZI. Mr. President, I ask unanimous consent to set aside the current amendment so that I may offer two amendments, amendments Nos. 28 and 29, and then return to the pending amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

> The Senator from Wyoming [Mr. ENZI] proposes amendments en bloc numbered 28 and 29.

The amendments are as follows:

AMENDMENT NO. 28

(Purpose: To clarify standing)

Beginning on page 3, line 22, strike ''adopted,'' and all that follows through ''including'' on page 4, line 1, and insert ''adopted or when an individual becomes subject to a discriminatory compensation decision or other practice, including''.

AMENDMENT NO. 29

(Purpose: To clarify standing)

Beginning on page 5, line 6, strike ''adopted,'' and all that follows through ''including'' on page 5, line 10, and insert ''adopted or when a person becomes subject to a discriminatory compensation decision or other practice, including''.

AMENDMENT NO. 25

Mr. ENZI. Mr. President, I rise to speak in support of the Hutchison amendment. Before I do that, I want to voice some concern, again, about the process we have gone through on this bill and that we might be going through on others. I just came from a health care meeting where we are, in a bipartisan way, trying to reform health care. That is being done the right way. We have a task force and the task force has set down principles and questions. Those of us on the task force are returning to Members of our side of the aisle and gathering their input, answers, and additional questions. We will keep going through this process until we have hammered out the principles. Then we will start putting substance in it. Then it will go to the two committees of jurisdiction. That makes it a lot more difficult than most bills. It will go to both the HELP Committee for the health policy portion, and then it will go at the same time to the Finance Committee for the way to finance what we are talking about in the policy.

We did this on the pension bill. That was a 1,000-page bill that only took up an hour of floor time while we debated two amendments, had those two votes, and a final vote. That is the simpler way of doing bipartisan work that winds up with an actual result. So often here we spend all of our time debating the 20 percent we don't agree on and fail to look for any kind of a third way of doing something that solves the problem we started out on originally. This is not a very conducive atmosphere to negotiate anything. It is not a negotiation. It is a lay down your amendment, have it voted up or down, and because there can't be any nuances in it, the hundred voices are not heard. The voices of the constituents of the 100 people who serve here are not heard. We vote down a lot of things. Occasionally, we vote for something. But usually, what is brought to the floor is done so without any kind of a real set of principles, let alone consensus, and thus, never makes it through the body.

I know there have been some changes in majority and minority. That will still hold true, and I appreciate the majority agreeing that there will be amendments and that I got to offer two amendments that we will be debating and voting on later, I hope. This is kind of a test to see if we are going to do anything in a bipartisan way, and to see if we can do it from the floor of the Senate rather than in committee. This has not had a committee markup. This has not had the voice of the 23 people working, in some detail probably, through a couple hundred very detailed amendments, and that would be resolved between the Members. That is the most effective way to address the issue and to get it resolved.

The issue that was raised is, what if an employer discriminated against an employee because she was female and paid her less than male colleagues doing the same job with the same skills and experience? That is terrible. Such conduct by an employer has been illegal for 45 years under one statute and 46 under another. But like virtually all rights of action, it has to be exercised within a statute of limitations. So this bill's supporters ask: What if the employer hid the information the employee needed to realize she was the victim of discrimination and she missed the deadline to sue? We don't want that to happen, and courts have dealt with that issue by extending the statute of limitations on a case-by-case basis through the use of estoppel and equitable tolling. The reason this was not applied in the Lilly Ledbetter case was because there she stated in court proceedings that she was aware of the pay disparity many years before she brought the lawsuit. But putting her case aside, I can certainly agree that the statute of limitations should be extended, particularly in cases where an employer has deliberately hidden the fact of discrimination.

Senator HUTCHISON's amendment does just that. It codifies the discretion courts have applied for years. Under the Hutchison amendment, individuals who, because of conscious concealment or simple lack of information, are not aware of discrimination are not prevented from filing and pursuing their discrimination claim, even if it is well beyond the statute of limitations. Here we have an amendment that would provide some statute of limitations but takes care of that case where somebody illegally hides information or where it isn't the normal course of business to get that information.

I wish to review what the Hutchison amendment does not do. It does not eliminate the statute of limitations for all employment discrimination cases and thereby create a litigation bonanza. It does not eliminate the incentive for employees to air and resolve concerns about whether they are being treated fairly in the workplace. It does not open up standing to bring employment discrimination cases to individuals other than the affected employee. That is an important part right there. In the bill we are talking about, I know we would have extensive committee discussion about other affected parties. Who would they be? How long could they make a claim? Can it be generations later? Does it have to be at the time of death, while the person is still working there? We can't tell from the bill, but other affected persons is anybody the person may or may not be related to who could be affected by the decision.

Can you think of anything broader than that? Don't you think that ought to be pulled back a little bit? Again, we didn't talk about principles. We didn't go through committee. We didn't put in multiple amendments that could have brought up some of these points, so here we are on the floor of the Senate kind of doing up-or-down amendments and I am sure arriving at things that, even if they pass, will come to raise a lot of questions in a very short period of time. That is not what we are supposed to be getting done for the American people.

The Hutchison amendment does not present a direct threat to our already struggling defined benefit pension system. The more strain we put on that, the less people are going to do it, and we want people to have pensions. So for all of those reasons, I will support Senator HUTCHISON's wise and effective approach, one that could probably be negotiated finer and done more carefully, but that would be committee work. I will support it because I think it is a wise and effective approach that will ensure that no one loses the right to sue because they didn't have the information to realize they were being mistreated. That is our goal.

While I am expressing strong support of S. 166, which is the Hutchison alternative, and I spoke on this matter earlier, I continue to express my deep concern shared by most of my colleagues about the way the bill has been handled. I will keep bringing that up on this and every bill that skips the process.

By circumventing the regular order and not subjecting this legislation to the committee amendment process, I believe it has inadequate review and debate and no opportunity for a measured consideration of other means of achieving its same stated legislative goals. That is a process which should be done in committee, not attempted to be done on the floor. However, that is the route that is being forced on us, the minority, so that is the route we will have to follow now. We hope this is not a precedent-setting bill—or precedent-setting process. It definitely will be a precedent-setting bill regardless of whether it is S. 181 or S. 166. Yet when we compare the substance of S. 181 with that of the Hutchison bill, it should be clear the legislation has suffered from a lack of process and the review and scrutiny it needs and could bring.

Now, we should begin by first keeping clearly in mind the harm which S. 181 was purportedly designed to address. The problem is a simple one. Title VII requires that the victims of employment discrimination must commence a legal claim within 180 days of the act of discrimination, or in the case of a series of discriminatory acts, within 180 days of the last act in the series.

I should note that in most States the limitations period is actually 300 days. But in Mrs. Ledbetter's home State of Alabama, it is 180 days, so I will use that number in my statement today.

When title VII was drafted, Congress consciously used the 180-day period because they wanted to ensure that all claims of employment discrimination were raised immediately and remedied quickly—get the relief to the person right away. However, what happens if the victim does not know he or she has been discriminated against? There are a lot of possible examples of this. Suppose an individual who is a member of a racial minority applies but is not selected for a job bid or a promotion yet learns, more than 180 days after being denied the job, that it was awarded to a White applicant with the same or lesser qualifications? Or suppose a female worker receives a wage increase but does not learn until well beyond 180 days from when she gets the wage increase that she has received less than her male peers? She may not know she is being compensated less because her employer has intentionally hidden those facts or simply because employees may simply not know such information. In either case, the result is the same—the employee, through no fault of his or her own, simply does not know they may be the victim of discrimination until well beyond the 180 days from the time they received their wage increase or lose their job bid.

Let us be completely clear. I do not believe there is anyone who believes an employee in any of those or similar circumstances should lose the right to file a discrimination claim because they did not have the necessary facts and did not have any reason to know they were being discriminated against before the 180 days passed. This was precisely the problem that S. 181, the Ledbetter bill, was allegedly designed to address. If that were actually the case, I would vote for the Ledbetter bill. But the Ledbetter bill goes way beyond addressing the kind of situations I have outlined here—so far beyond that it creates new problems that make supporting it impossible for me and many other fair-minded Members.

By contrast, the Hutchison bill directly addresses and solves the very problems I have outlined. Under the Hutchison bill, the denied job applicant who did not learn the facts until long after his bid was denied or the female worker who did not know her wage differential compared to her male peers, either because of conscious concealment or simple lack of information, are not prevented from filing and pursuing their discrimination claim, even if it is well beyond the 180 days from when they got the raise or did not get the job. The Hutchison bill does this by making the 180-day period a flexible one that can be readily extended in the kind of cases I have mentioned.

On the other hand, the Ledbetter bill does this by eliminating the 180-day limitation period completely. The Hutchison bill is a rifle shot to solve a problem that everyone agrees must be solved. The Ledbetter bill is a shotgun blast that causes collateral damage to important safeguards in our system of laws.

Limitation periods, such as the 180-day period for Title VII employment discrimination claims, are a feature in every law that grants the right to someone to bring a legal action against someone else. They are universal because such limitations serve two very important purposes.

First, the existence of a limitations period is an inducement to those who have claims to seek redress promptly. All of us have an interest in a society where the laws are promptly enforced and, where the beneficiaries of those laws are promptly protected and promptly compensated. This is particularly true in the area of discrimination where society benefits best when discrimination is immediately exposed and immediately remedied. It may affect more than just the one person.

Second, limitations periods serve to ensure fairness in our litigation process. The simple truth is that the more removed in time an event is, the less likely anyone is to remember it clearly or accurately. In a work setting, those who made compensation decisions 5, 10, 20 years ago, may no longer be around. And even if they are around, how could they possibly remember with any accuracy the basis for the decisions? Under our Tax Code, records are not kept nearly that long for individuals or for businesses.

The inability to fairly defend against a claim and the inability to develop reliable evidence are the exact reasons why laws invariably contain a limitations period. Limitations periods are why someone cannot come along and try to sue you over an automobile accident that took place 20 years ago, or commence a legal action to take your house away because of a claimed defect in the title that is decades old, and why the Government cannot pursue actions against citizens that have become stale with time.

But S. 181 would do away with such limitation periods in employment discrimination cases and allow individuals to reach back in time to raise claims about which there is no fair chance to defend, no evidence of any value, and possibly nobody who was even there. We do not have to do this to address the concerns raised by the proponents of S. 181. Senator HUTCHISON's bill addresses those concerns completely.

S. 181 has a number of other problems which will be explained by my colleagues as we proceed to this bill, such as the potential to severely destabilize defined benefit pension plans and the expansion of individuals with standing to sue under civil rights laws. These are normally the kind of discussions we would have in the committee of jurisdiction, which in this case would be the Health, Education, Labor, and Pensions Committee, where our members and staff are well-versed in employment laws. However, the majority's actions will require us to have those discussions on this floor. It is not the way I want to do it, and it is not the way the American people expect us to do business, and it is not the way we will get things done.

Now, on this bill a vast number of people voted to proceed to the bill, and we all waived the 30 hours that could have been required before we could even make the first amendment. It was a nice concession on both sides; speeds up the process. But there are a number of opportunities—if the process were to get jammed—that huge hours can be added to the deliberations on this bill that do not need to be, that would not have been, probably, had it gone through the committee amendment process.

I just cannot emphasize enough how important that is to me. I made sure it happened when we were in the majority. I am hoping it will happen on future bills while I am in the minority. Cooperation around here gets a lot more done, and that is what the American people expect of us.

I yield the floor.

Mr. SANDERS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMUNICATION FROM SENATOR HILLARY RODHAM CLINTON

The PRESIDING OFFICER. The Chair lays before the Senate the following communication.

The assistant legislative clerk read as follows:

U.S. SENATE,
Washington, DC, January 21, 2009.

Hon. JOSEPH R. BIDEN, Jr.
President, U.S. Senate,
U.S. Capitol, Washington, DC.

DEAR MR. VICE PRESIDENT: This letter is to inform you that I resign my seat in the United States Senate effective immediately in order to assume my duties as Secretary of State of the United States.

Sincerely yours,

HILLARY RODHAM CLINTON.

MORNING BUSINESS

THE INAUGURATION OF PRESIDENT OBAMA

Mr. MCCONNELL. Mr. President, yesterday the Nation and the world witnessed the peaceful transfer of power from one President to the next.

While this now seems normal and fair, the idea that a head of state would relinquish his power willingly amazed many when George Washington willingly stepped down as commander-in-chief.

Two centuries later, that idea serves as one of the strongest principles of our democracy.

I congratulate President Obama, Vice President BIDEN, and their families.